BDI

POSITION PAPER | EU GREEN DEAL | FIT-FOR-55 PACKAGE

Fit-for-55: Fit for industry?

Position of the Federation of German Industries on the legislative package of the European Commission of 14th July 2021

PREFACE

7. September 2021

Europe faces the unprecedented challenge of proving to the world that a climate-neutral industrial continent is feasible.

On 28th June 2021, the EU has adopted its first ever Climate Law including an increased binding EU target of a net domestic greenhouse gas reduction of at least 55 % by 2030 compared to 1990 and Europe´s long-term objective of climate neutrality by 2050. To implement Europe´s increased climate targets the European Commission has presented the Fit-for-55 package on 14th July 2021 and thereby moves on in its climate debate from “how much to do” to “how best to achieve it”.

To stay ahead in the global race for the best climate and energy technology solutions, companies need **a clear and reliable fit-for-55 implementation plan** providing a clear commitment to Europe as an attractive business, investment and innovation location. Besides ensuring the cost-effectiveness of its measures, such an implementation plan must set the necessary framework conditions and concrete toolbox for supporting industry in elevating its global competitiveness and global climate and energy technology leadership on the road to climate neutrality.

The BDI welcomes the fit-for-55 package as **a bold and ambitious first concrete step forward**, notably with respect to advancing carbon pricing or promoting renewable energies, sustainable alternative fuels, sustainable mobility and energy efficiency. However, **critical framework conditions for the implementation of the fit-for-55 package and the future innovation and investment capability of EU industries remain missing**. These include for example the availability of a sufficient amount of renewable energies at competitive prices, the rapid development of the hydrogen economy or reliable carbon leakage protection measures. Instead of effectively putting an end to the combustion engine, the transport sector needs to be decarbonised in a way that is open to all technologies and charging and refuelling infrastructures must be consistently expanded. Therefore, an **overarching governance mechanism should be introduced to continuously inform and consistently govern the implementation of the EU´s new climate targets as a whole across different EU policies and instruments**, including the present fit-for-55 policy measures, infrastructure development or climate financing measures.

Europe's future viability stands and falls with **a reliable carbon price not only at EU but global level**. It is right to rely on separate systems when introducing EU emission trading in the buildings and road transport sectors. It is also important that the Energy Tax Directive provides incentives for CO2-neutral energy sources and relief for hydrogen. Distortions of competition for European air and sea transport through European isolated solutions however should be avoided. A European go-it-alone approach to climate protection will neither help the global climate nor European industry or the acceptance of the wider societal transformation. In the future, the EU must work even harder for a global level playing field in climate protection, at G7, G20 and UN-FCCC level.

Climate diplomacy for a sustainable Europe in a sustainable world must be given even more weight in the future.

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EXECUTIVE SUMMARY: DESIGNING A ROBUST FIT-FOR-55 GOVERNANCE

With the mammoth fit-for-55 legislative package of the European Commission of 14th July 2021, Europe´s climate debate moves on from "how much to do" to "how best to achieve it" - and rightly so.

In the light of Europe´s ambition of becoming the first climate neutral continent in the world and the ongoing global race for the best energy and climate innovation solutions, industry needs a strong and reliable "Fit-for-55" implementation plan.

Such an implementation plan should in our view be a true catalyst for Europe´s global energy and climate innovation leadership. Only with an industry that is strong in investment and innovation will it be possible to turn climate ambition into action while reinforcing Europe´s high economic and social cohesion or citizens welfare and prosperity.

Innovation, investment and cooperation represent critical factors for succeeding in Europe´s Herculean task of proving to the world that a climate-neutral industrial continent is possible:

- **Innovation for prosperity and global technology leadership**
  - According to the IEA, 80% of all technologies for 2030 are already in place. Technological solutions for implementing the 2030 climate goal in industry will be manifold: from efficiency improvements, to more electrification, more hydrogen and power-to-x solutions, the sustainable use of biomass or circular economy, to name just a few key net-zero solutions for industry.
  - For 2050, however, the IEA confirms that 45% of the necessary technologies still have to be developed. Consequently, it is imperative to rapidly scale up existing CO2-neutral technologies and to push forward the development of these technologies.
  - The BDI recommends finding technology-open transformation paths and build on the successful structure of closely interconnected value chains to drive progress and employment for future generations.
- **Investment for making the Green Deal a blueprint of new growth**
  - The scale of investment required is considerable: around 350 billion EUR of additional annual investment compared to 2011-2020 is needed to realise the increased 2030 climate targets, according to the European Commission. On top, an additional amount of 130 billion EUR per year is needed to realise other environmental targets.
  - To succeed, Europe should pursue a determined international export and cooperation agenda and provide companies with a reliable framework to stimulate and make the necessary investments in climate-friendly processes and technologies economically attractive.
- **Cooperation for buildings acceptance and social cohesion and as conditio-sine-qua-non for combating the global phenomenon of climate change**
  - Without comparable climate protection commitment from our international partners, a 1.5-degree scenario can only fail. Global climate change does not stop at Europe's borders. Convincing, global answers and joint action are the way forward.

For the fit-for-55 package to deliver on the ground, a series of framework conditions will have to be set in place. These include in particular the following:

- The availability of renewable energies in abundance at competitive prices- an Eu import strategy will have to be developed
- Modern and sufficiently flexible energy, transport and digital infrastructures, including charging and refuelling infrastructure in the transport sector – investment in infrastructure will have to speed up
- A harmonised EU regulatory framework for the classification and certification of renewable and low-carbon gases and fuels based on the carbon footprint
- Revised Climate, Energy and Environmental State Aid Guidelines (CEEAG 2022) that are fit to accompany industry in its transformation, including through appropriate eligibility criteria for state aid in form of reductions from electricity levies for energy-intensive users, the eligibility of carbon contracts for difference (CCfDs) as new instruments to support the ramp of the hydrogen economy or technology-neutral support for CO2-neutral hydrogen during the transitional phase.
- Realistic sustainable finance policies that are aligned with the different technology pathways of different sectors to effectively support the industrial transformation – the substantial contribution of gas to climate change mitigation and a successful industrial transformation should be recognised.
- A solid carbon pricing framework at EU and global level
- A fully fledged Green Deal diplomacy

Continuously monitoring progress in all areas that are intertwined with the presented fit-for-55 package is **a fundamental prerequisite for making the fit-for-55 package work on the grounds. It will be equally imperative for a consistent implementation of the EU climate goals while maintaining Europe´s world-class industrial base**.

In general, the BDI evaluates the Fit-for-55 package as a bold, concrete and ambitious step forward for turning climate targets into action. This is particularly true for the following elements of the package, which we recommend supporting in the further legislative process:

- **EU-ETS**: The proposal for introducing separate upstream trading systems for buildings and road transport (with own certificates, approvals, LRFs and MSR provisions) and establishing a Climate Social Fund as accompanying measure to increase acceptance; using ETS revenues for reinvestment in climate protection and energy savings projects; making carbon capture and utilisation (CCU) accountable towards the ETS as an important step for making CCUS technologies economically attractive; the support for hydrogen and CCU projects through CCfDs given by the Innovation Fund.
- **RED III:** The promotion of PPAs; the suggested extension of the Union database to RFNBOs beyond the transport sector; the accountability of electricity production from RFNBOs towards the increased RED target and mainstreaming renewable energy in buildings.

- **EED:** The increased headline target of 9% by 2030, indicative nature of national contributions to the headline target and continued flexibility granted to Member States for implementing the energy savings obligations scheme of article 8

- **REFUEL AVIATION (SUSTAINABLE AVIATION FUELS)**: The establishment of a European Market for Sustainable Aviation Fuels and the predefined ramp up of the SAF minimum share until 2050

- **ETD**: The ranking of taxation by energy content coupled with environmental performance; tax emptions for the aviation and waterborne navigation sector and for alternative fuels , gas and electricity

However, critical framework conditions remain missing and important questions with respect to Europe as an attractive business, innovation and investment location remain unanswered. These should be addressed during the upcoming legislative process. In particular:

- An **overarching fit-for-55 governance mechanism** should be established **to stir a consistent implementation of EU climate goals across all relevant EU policies and instruments, including this package.** It should continuously inform on the state of implementation and help identifying potential gaps to be closed in upcoming reviews of different EU policies and measures. Respective amendments should be made to the **EU Regulation 2018/1999 on the Governance of the Energy Union and Climate Action.**

- **Consistency of the fit-for-55 package with further implementation measures needs to be ensured on the bases of the above mentioned governance mechanism**, in particular with the Gas- and Hydrogen Decarbonisation package, the revised Climate, Energy and Environment State Aid Guidelines (CEEAG) and further ongoing implementation work under the EU taxonomy or existing Renewable Energy Directive (REDII).

- **EU ETS**: **Effective carbon leakage protection** is of utmost and increasing importance if our industries are to transform successfully in such a short timeframe. The reduction of free allocations while simultaneously increasing the Linear Reduction Factor, overall investment pressure and funding requirements for climate protection measures exacerbate the challenge of remaining globally competitive while decarbonising industry. If the necessary infrastructures for low-carbon hydrogen, for renewable power etc. were not in place before operators change their processes, increasing carbon prices will penalise production and lead to investment leakage. Existing carbon leakage protection mechanisms should therefore be reinforced as long as there is no global level playing field. The revised CEEAG 2022 need to be aligned accordingly.

- **CBAM**: A ten-year transition period before potentially introducing CBAMs is better in terms of planning and investment security than an abrupt introduction of a new, untested instrument. Also, the introduction of a test phase with information requirements and a focus on direct emissions are important. However, the risk of import barriers for Germany as an export nation has not been averted and trade retaliation measures of the EU´s trading partners are seriously at stake. In addition, Annex III (calculation method) raises questions regarding the availability and quality of relevant data and many important implementation aspects remain unclear since subject to future delegated acts. Therefore, the BDI remains opposed to

the proposal of introducing CBAMs. Instead, existing carbon leakage protection should be reinforced as long as there is no global level playing field.

- **RED III:** The focus must be on ensuring the availability of sufficient renewable energies at competitive prices, as well as the development of the hydrogen economy, including e-fuels. For a rapid ramp-up of a hydrogen market, an adaptation of the European legal framework is essential. The revised Renewable Energy Directive should make renewable and low-CO2 hydrogen tradable across Europe and internationally through a harmonised classification and certification scheme based on Guarantees of Origin (GOs). In its present form, the proposal falls short in terms of what is needed for ramping the hydrogen economy.

- **AFIR:** The specifications of 1kW per BEV/ 0.6 KW for PHEVs are insufficient for the necessary EU-wide EV ramp-up and should be increased. In addition, a direct link between the AFI-Regulation and the EU CO2 fleet regulation should be ensured.

- **CO2-FLEET REGULATION CARS AND VANS:** Technology open requirements should be introduced instead of a de-facto ban of vehicles with an internal combustion engine by 2035.

- **REFUEL EU AVIATION (Sustainable Aviation Fuels/SAF):** Regulatory certainty for PtL plant expansion should be ensured and the refuelling obligation of at least 90% should be reconsidered. A “book and claim” approach should also be established for complying with the SAF minimum share and fines should be earmarked for reinvestment in SAF projects.

- **FUELEU MARITIME**: a level playing field in international shipping has to be maintained.

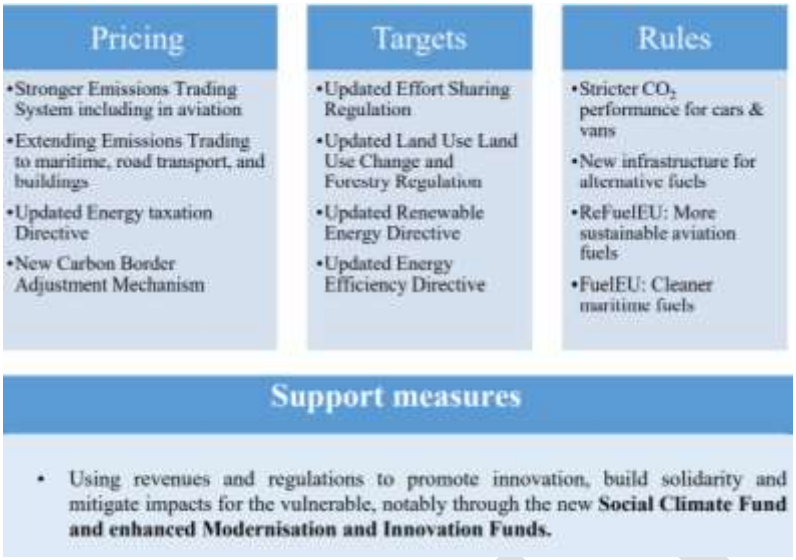
- **ETD:** Mandatory exemptions for alternative energy products and for energy intensive industries, including the mineralogical industry and a transition period to reach the new minimum tax levels need to be set in place. The possibility to fix a tax rate for business use should be restored. The suggested kerosene tax should be replaced by a climate levy equivalent to the German aviation tax.

We specify our comments in the subsequent chapters in more detail:

1. The Fit-for-55 package in general: Interconnected proposals and big levers

The general approach of interconnected fit-for-55 proposals

The BDI welcomes the general approach of the fit-for-55 package of **interconnected proposals to strike a balance between carbon pricing, targets, rules and support measures**:



Source: European Commission, Communication Fit-for-55

We also welcome that the individual legislative proposals are backed by **impact assessment analysis**, which takes into account the interconnection of the overall package. The analysis shows that **an over-reliance on strengthened regulatory policies would lead to unnecessarily high economic burdens**, while carbon pricing alone would not overcome persistent market failures and non-market barriers. The BDI agrees that a successful policy mix needs to strike a delicate balance between pricing, targets, rules and support measures.

While the Fit-for-55 package contains many of the relevant instruments for striking this balance, however, further important elements for implementing the EU´s climate goals are either missing or subject to parallel legislative processes, as previously mentioned. To avoid stranded assets, the **present fit-fo-55 package also needs to be consistent with further implementation measures to come**, in particular **the Gas- and Hydrogen Decarbonisation package**, the **revised Climate, Energy and Environment State Aid Guidelines (CEEAG)** and further ongoing implementation work under the **EU taxonomy** or **existing Renewable Energy Directive (REDII)**. Hence, the above key proposal of the BDI to introduce **an overarching governance mechanism** to ensure a consistent implementation.

In addition to its proposal for an overarching fit-for-55 governance mechanism, the BDI calls on EU policymakers:

- To address the **substantial contribution of gas to climate change mitigation under the EU Taxonomy**, to foresee a pathway to get from transitional to mitigating activities in the longer run and to recognise transitional activities in the manufacture, energy and transport sector, notably the repurposing of gas infrastructure.

- To **make the existing gas market model fit for the integration of climate-neutral gases**, including for the possibility of joint financing of hydrogen and gas networks via existing fees to kick off the transition.

- To set **realistic and sufficiently flexible criteria for the definition of "green hydrogen production"**

- To **incentivise CO2-neutral hydrogen** in a technology-open way for the transitional phase **in the final CEEAG 2022, support the use of carbon contracts for difference** (CCfDs) for building the hydrogen economy and set **appropriate eligibility criteria for future state aid in form of reductions from electricity levies for energy-intensive users**

The big fit-for-55 levers

The BDI calls on Europe to boost its leadership in energy and climate innovation to ensure security of supply, energy resilience, climate neutrality and the global competitiveness of EU industries . Only by unlocking Europe´s industrial strength will a fair and cost-efficient transition be possible, and Europe be able to serve as a global role model that others will wish to join in.

As described in the BDI Green Deal Position Paper of March 2021, German industries see ten key levers for a successful fit-for-55 toolbox:

- Pursuing technology open pathways to net-zero building on even stronger industrial ecosystems
- Accelerating the deployment of existing CO2-neutral technologies and the development of further technologies - massively investing in energy, transport and digital infrastructures
- Leading in scaling the EU and global hydrogen economy
- Developing a global carbon pricing roadmap and common price for 2030 at least at G20 level
- When rescoping the EU-ETS, preventing upheavals for incumbents
- Shielding European industry from unfair competition on the road to net-zero
- Ensuring the availability of abundant renewable energies at competitive prices in an integrated and upgraded low-carbon energy system
- Accelerating a market-driven Circular Economy, low-carbon mobility and building renovation
- Unlocking the potentials of digitalisation and the data economy
- Ensuring consistency throughout the Fit-for-55 package and the entire negotiation process

While we see most of these levers taken into account in the package, important differences exist that should be addressed:

- Most prominently, leaving the path of technology neutrality by proposing a de facto ban on vehicles with combustion engines from 2035 onwards diminishes Europe´s innovation capabilities and the potential of cost-efficient sectoral technology pathways. Instead, **technology openness** should be maintained.
- In addition, **market-based instruments and incentives** should be reinforced while keeping regulatory intervention, administrative burden and costs to the minimum.

- **Reliable carbon leakage protection via the tried and tested instruments of the EU Emissions Trading Scheme (ETS)** is ever more important in times of increasing climate ambitions without other world regions implementing comparable action. As long as ambition gaps exist and continue to grow, existing carbon leakage tools should rather be strengthened than reduced. **Carbon Border Adjustment Mechanisms (CBAMs) are no reliable alternative to carbon leakage protection under the EU-ETS**, since prone to abuse and bearing the risk of new trade conflicts.

- **Leading in the development of the hydrogen economy requires more speed, more harmonisation and more cross-border and international cooperation:** the July package falls behind the necessary with respect to the ramp up of the hydrogen economy. In particular, the opportunity of establishing an effective certification scheme for renewable electricity and climate-neutral gases and fuels should be tapped and the relevant market design and harmonised regulatory framework should be developed simultaneously. For a successful industrial transformation both, electrification and hydrogen, will play a crucial role.

- Overall, the fit-for-55 framework should place more emphasis on **making the necessary massive investments in climate-friendly processes and technologies economically attractive.**

2. Carbon pricing: the EU ETS Reform

The EU ETS is a cornerstone of the EU's policy to combat climate change: It is the world's first major carbon market and remains its largest by limiting emissions from around 10,000 installations in the power sector and manufacturing industry, as well as airlines operating within Europe. Today, it covers around 41% of the EU's total GHG emissions and has proven to be an effective tool in driving emissions reductions cost-effectively. Installations covered by the ETS today reduced emissions by about 43% since 2005.

In general, **the BDI promotes the EU emissions trading as a leading instrument and pushes for creating a common carbon market with the most important trading partners based on equal conditions for all players**. The EU-ETS reform should put carbon leakage protection on a firm footing reflecting Europe´s increased climate ambition and the reality of still widening global ambition gaps. The reform should ensure consistency with the new carbon border adjustment mechanism (CBAM) if carried forward and opt for separate ETS systems when introducing emission trading in new sectors.

The BDI welcomes the i**ntroduction of a separate Emission Trading System for road transport and buildings (Chapter IVa)** in order to set further incentives through price signals in a market-based system. Until 2030 at least the scope of the EU ETS should not be extended to buildings and road transport as otherwise the system will collapse due to hugely differing abatement costs in the various sectors by coercing very different addressees - companies and citizens - into one system. Setting up separate EU-wide trading systems for buildings and road transport can also help avoiding lengthy discussions over national targets under the ESR.

While a European solution for road transport and building sector is certainly desirable in the long term, introducing a ETS for these two sectors at the current time would have to take the form of two separate systems to set the right price signal, i.e. one for road transport and one for the building sector, at least for the foreseeable future.

As long as the marginal abatement costs in the different sectors are extremely different, separate trading schemes should be set up for these sectors. A common EU ETS for road transport and buildings would, however, be counterproductive and would discourage investments due to an inaccurate price signal. Even if a price cap existed to avoid undesirable price spikes in markets, a diverged price signal would emerge in the long run.

In addition to price signals, a complementary policy mix is needed for both sectors. In the buildings sector, for example, funding programmes, such as the German Federal Funding for Efficient Buildings (BEG) set further incentives for investment. Private households and companies need a reliable and long planning horizon to achieve climate neutrality. For road transport, there is also a need for accompanying incentives and support, especially for the development of charging infrastructure, as well as consistent regulation with regard to the revision of the fleet limit values and the AFID/RED/ETD.

The BDI also welcomes the i**ntroduction of CORSIA and the clear demarcation between the EU-ETS and CORSIA**. However, the responsibility for the advancement and efficiency of CORSIA for extra-EU/ international aviation should remain with the ICAO.

It is paramount to avoid any market distortions that European airlines with hubs in the EU would face.

As regards the **existing EU-ETS for industry and electricity**, it will be essential to arrive at a delicately balanced reform, especially with respect to the necessary **carbon leakage protection via existing instruments, and notably free allowances and indirect cost compensation**, as long as ambition gaps in international climate action continues to exist. This becomes all the more relevant in the light of the proposed significant increase of the emission reduction target for these sectors from 42% to 61% in comparison to 2005 and the proposal for rebasing and a tightened Linear Reduction Factor of 4,2% and a rebasing mechanism.

Elements of the proposal that the BDI supports and recommends maintaining in the further proceedings:

- The proposal of **standalone upstream emission trading systems for road transport and for buildings and related carefully designed phase-in mechanism,** which are **separate** from each other and separate from the existing EU-ETS for the industry and electricity sectors

- The **recognition of carbon capture and utilisation (CCU) as a mitigation option and making it accountable towards the existing EU-ETS:** This is an important step for making CCUS technologies economically attractive. Further details regarding creating a functioning mechanism will have to be elaborated for carbon removal certificates. The elimination of the limitation of CO_2 transport via pipelines under the EU ETS Monitoring Directive is highly relevant for the transportation of CO_2 in a future CO_2 economy. Without the use of CO2 capturing, (utilisation) and storage technologies climate neutrality will not be achievable.

- The **general reinforcement of the EU-ETS Innovation Fund** and more particularly:

  - the support given for hydrogen and CCU projects through CCfDs.

  - the driving of auction revenues (from stationary sources, aviation and maritime) into the Innovation Fund (IF): The first IF call for large-scale projects registered

applications whose total financial requirements were 22 times higher than the available budget. With the considerable increase in 2030 climate ambitions significantly more financial resources need to be mobilised to enable large-scale deployment of low-carbon technologies in ETS sectors and especially in industry. Increasing the IF within the ETS, could cover part of the financial needs. However, further additional support will be needed for a successful transformation.

  - Provisions, such as Article 30d that re-direct revenues from CO2 pricing to the respective sectors to promote CO_2 reductions.

- The **continuation of indirect cost compensation mechanism** (Art. 10a(6)), which is essential for supporting especially electricity-intensive industries in their transition

- **The widening of the definitions of activities covered by annex I of the Directive**: including activities, such as steelmaking in general, independently of the process, will create incentives for decarbonising processes. The operator will be able to keep his free allocation, which helps to reduce economical risks due to the transition.

- **Regarding emission trading in the transport sector**:

  - **The proposal for an ETS for road transport at EU level**: Since 2021, national road transport has been part of the German Fuel Emissions Trading (BEH). It makes sense to gradually develop existing national approaches to CO2 pricing towards a reliable, European, technology-open and market-based path. Therefore, the European proposal to include road transport in European emissions trading and to price fossil CO2 and exempt renewable fuel from non-fossil sources is welcome.

  - **The implementation and clear demarcation of CORSIA in relation to the EU ETS in the area of aviation:** this is a step in the right direction to address emissions also in international aviation without placing a double burden on European airlines considering that the scope of the EU ETS for aviation remains focusing on intra-European flights.

Elements of the proposal that the BDI rejects or for which gaps remain to be filled during the further legislative process:

- **Reliable and increased carbon leakage protection has to be set in place for all sectors:** Sufficient free allocation in ETS installations needs to be ensured, even with a decreasing cap, to prevent carbon leakage risk from getting out of hand. ETS installations need sufficient free allocation; this also applies accordingly to aircraft operators for feeder flights. As long as the ambition gap in climate protection between EU and non-EU countries continues to grow and other countries do not implement equivalent climate protection measures, the existing ratio of auctioning to free allocation (57:43) should be shifted in favour of free allocation. Increasing the share of free allocation is urgently needed to avoid the cross-sectoral correction factor (CSCF) as the cap continues to decrease. The current auctioning share of 57% is based on the power sector's historical emissions share of the cap, which was determined using a database that is well over ten years old. The ongoing decarbonisation of the power sector leaves room

for increasing the share of free allocation and thus avoiding the CSCF. This option would reduce the risk of losing competitiveness, especially in this investment phase, for companies that have already started their transformation towards climate neutrality in 2050.

- **Effective carbon leakage protection is also essential for small installations:** In principle, CO2 pricing also makes sense in the non-ETS sectors. What needs to be considered is what should happen to installations that carry out ETS activities (Annex I of the ETS Directive) but do not exceed the thresholds specified in Annex I. In Germany, these sectors are subject to an upstream system in the form of fuel emissions trading (BEHG), which, unlike the EU ETS, has an indirect effect. While it is also recognised by policymakers that this creates a carbon leakage risk for these plants, so far there is no national regulation to minimise this risk. It will have to be examined whether the **threshold values in Annex I** can be lowered in such a way that only the smallest plants do not fall within the scope of the EU ETS. The advantage of this would be that plants that manufacture identical products, but in plants of different sizes, would be assessed uniformly in terms of direct emissions. They could then also be protected from carbon leakage in a simplified procedure across the EU under the ETS Directive. Should the thresholds be lowered, it is essential to ensure that the administrative requirements (reporting, monitoring plans, etc.) for small plants are kept to the minimum. For the time being, no SME could "reasonably" participate in the EU ETS.

- **Carbon leakage protection remains also necessary in maritime transport**: The inclusion of maritime transport in the EU ETS is likely to increase the cost of maritime supply chains. The full integration of intra-EU maritime transport as opposed to the pro-rata application in transport between the EU and third countries leads to distortions of competition and disadvantages the European maritime economy.

- The proposal for **making ETS free emission allowance allocation conditional to the implementation of the energy audit**

- **Offsets should not be rejected categorically:** The use of the market mechanisms of **Article 6 of the Paris Agreement** (**"cooperative mechanisms"**, such as international trading of certified reduction credits) for demonstrating compliance with the EU ETS should not be excluded from the outset, as the Commission suggests. COP26 is expected to adopt the so-called “Paris rulebook” that lays down binding rules for the application of cooperative mechanisms. In the medium term, progress must be made regarding global CO2 pricing. The BDI advocates for establishing a "global carbon pricing roadmap" to converge CO2 price paths at least at the level of G20 by 2030.

- **CO2 pricing in transport can only be effective if consumers have realistic options for investing or switching to low-carbon transport modes and technologies**. Therefore, CO2 pricing must be flanked by an intelligent mix of incentives and support for new propulsion systems and fuels, as well as by the expansion of rail and waterways infrastructure and refuelling and charging infrastructure. Revenues from an ETS and national emissions trading schemes for transport must also be used for this purpose.

- **The demand for green products should be stimulated**: One important instrument to create markets for green products is green procurement. Every year, public bodies in

the EU spend about 14% of GDP on public procurement, which amounts to about €2 trillion a year.

- With regard to **emissions trading system for road transport**: By setting a fleet limit value of 0g in 2035 as part of the CO2 fleet regulation for passenger cars, the impact effect for the new car fleet aimed at with the introduction of emissions trading for road transport is upset. In addition, there is no timetable for a link with the existing EU ETS. The interactions of these complementary regulations remain unclear.

- **Distortions of competition in the EU ETS at the expense of European airlines and hubs must be counteracted:** The revision does not provide for a sufficient solution to address keeping a level playing field. A remedy could be a free allocation of ETS allowances for the part of the emissions that is subject to market distortion.

- **The elimination of free allocation for aviation**, as proposed in Article 1 of the revision of the EU emission trading system for aviation amending Directive 2003/87/EC Article 3d, leads to unnecessary distortions of competition. Carbon leakage protection for feeder flights must be guaranteed. To this end, free allocations should be calculated more precisely according to the carbon leakage share.

- **Revenues from the EU ETS for aviation could be used for reinvestment** in climate protection and efficiency projects in aviation.

- **Implementing a baseline for CORSIA of 2019-2020 for emissions post 2023, as laid out in Art. 1, para. 9 amending Article 25a, adding paragraph 3 to Directive 2003/87/EC:** The EU Commission is forestalling the decision-making process at ICAO level, which has not yet set a baseline following the pilot phase of CORSIA. Including the year 2020 for the baseline post 2023 is causing additional distortions, since 2020 was a year of immense crisis in aviation and the sector was hit hard by the dramatic decline in demand due to the Coronavirus pandemic.

- Regarding **the geographical scope of CORSIA past 2026**, the consideration (20) lays out the plan for flights not covered by CORSIA to be subject to the ETS after 2026. The BDI rejects this idea as it undermines international agreements and will be distortive to competition.

- **The related Market Stability Reserve (MSR) proposal should not be used to artificially drive up the CO2 price:** It would be counterproductive if the MSR removed every bit of surplus. Surplus derived from the realisation of mitigation measures is the goal intended by the lawmaker (GHG reductions by the operator reduces the amount of allowances needed for compliance), this is “good surplus” because this acts as incentive for mitigation. Ideally, the task of the MSR should be to remove “bad surplus” resulting e.g. from external economic shocks. The MSR has so far not been intended to artificially inflate the price of CO2. The proposal could undermine the cost-effectiveness of the system and unnecessarily increases CO2 costs and electricity prices for society. The focus should be on relaxing the rules for releasing allowances from the MSR. This could counteract the rise in the price of CO2 as a result of increased climate change ambitions, and especially at a time of COVID crisis when the financial capabilities of the industry are extremely limited. In general, the review of MSR rules should take into

account the need to ensure reliable framework conditions and long-term planning capability, especially in the transition to a climate-neutral economy.

3. Proposal for a Regulation on a new Climate Action Social Facility

The BDI welcomes the creation of a Social Climate fund, which supports among others energy efficiency measures in buildings, the decarbonisation of heating and cooling in buildings and mobility and transport for low-income households. It is important to create awareness that measures for climate protection trigger enormous investments but have also consequences for socially weaker groups. Thus, the social facility might be an important means to create acceptance.

BDI recommendation:

- The Commission should ensure that these **funds are spent most effectively and reach their potential recipients in an unbureaucratic manner.**
- Furthermore, it would be desirable, to **spend generated ETS revenues according to its origin** (i.e. transport and buildings).
- **SMEs should not be disproportionately burdened:** Policymakers should ensure that the scheme is designed and funded at national level and that the costs are shared fairly.

4. Proposal for a new Regulation on Carbon Border Adjustment (CBAM)

The carbon border adjustment mechanism should be, according to the Commission proposal, linked to the EU ETS in the form of a so-called “notional ETS” in terms of sectors and emissions (CO2 and partly, nitrogen oxide or perfluorocarbon). In the pilot period of the legislation, it should cover imports of goods listed in Annex I from the iron, steel, aluminium, cement, fertiliser and electricity sectors. There is a review clause provided for possible inclusion of further sectors, indirect emissions, and methodology for calculating environmental footprint.

The proposal provides for a transitional period wherein importers report emissions that are embedded in their products from 2023-2025 and from 2026 must both declare and submit CBAM certificates for their imports.

The legislation has a long way to go before meeting several criteria from the perspective of German industry. Many sectors, particularly those targeted in the pilot period, seek to retain free allocation on the basis of, for example, technically realistic benchmarks and to compensate for price increases caused by emissions trading. However, this was not a universal opinion, as some sectors were of the opinion that this is necessary to ensure successful implementation of the instrument.

It is important for German industry that the final legislation takes the fact into ascount that the switch to low-carbon production technologies is not an overnight process, but rather quite long-term in nature. Carbon leakage prevention is of course a vital priority, as is securing the international competitiveness of European products, even those that are transitioning to low-carbon production. Ensuring a level playing field as well as competitive neutrality remains, as in trade policy, a priority for the BDI and its enterprises. European companies can only reach ambitious climate goals if they themselves are

economically successful. German industry remains export-oriented, and maintaining competitiveness of EU exports, particularly in the affected sectors, is key.

The design must be practicable and legally secure for both enterprises and authorities. If and when possible, the administrative burden must be kept to a minimum.

BDI supports a sectoral, step-by-step approach with an upstream test phase and a focus on direct (scope 1) emissions. This helps not to undermine the existing, tried and tested carbon leakage protection instruments.

For German industry, it is indispensable that the mechanism be WTO-compatible as not to undermine the multilateral trade framework. However, the CBAM proposal leaves much to be desired in terms of clarity and transparency about how this is intended. Besides repeating the point that WTO compatibility is an essential element of the legislation, it is regrettable that the proposal does not go into depth on how this is to be achieved.

For the most part, WTO compatibility with a CBAM for imports deals primarily with rules under the General Agreement on Tariffs and Trade (GATT). However, if extended to exports, then a mechanism would also have to prove not to qualify as a prohibited or actionable subsidy under the Agreement on Subsidies and Countervailing Measures (SCM).

One key element of WTO law is the non-discrimination principle (GATT Article 3), under which a CBAM should not differentiate between like products or between Members of the WTO. This applies both to fiscal and regulatory measures. Here, it is key that the Commission can prove that EU products and imports must pay the same price under the EU ETS. (The EU's CO2 Border Adjustment: Climate or Fiscal Policy? (swp-berlin.org)) Under this article, the burden of proof is higher for importing nations,

There are two exemptions, however, that the Commission will likely take advantage of in order to prove WTO compatibility. GATT Article XX allows a measure to be free from the national treatment requirement if "necessary to protect human, animal or plant life or health" or if it relates to the "conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption." Both these elements are possible routes for the Commission to take, although this article does also require that the measure not be applied in a way that "constitutes a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail." According to Horn/Mavroidis (2011), the designated policy should focus more on reducing and not entirely eliminating greenhouse gas emissions for the Appellate Body to rule in its favor. It could be argued that reinvestment in climate funds would help an Article XX exception.

In principle, the phase-out of free allocation in the EU ETS is designed for WTO compatibility. However, this does not deal with the inevitability of retaliation by third countries who feel discriminated against under the mechanism and the spiral of new trade conflicts that could build up as a result.

It may be that exemptions for least-developed countries, which are not yet foreseen in the current proposal, could be necessary to allow for non-discrimination under WTO provisions. (The Fit for 55 package: A diplomatic tightrope – European Council on Foreign Relations (ecfr.eu)) Many exporters of aluminum, steel and fertilizer to the EU belong to this group.

In general, the BDI advocates for setting place a global CO2 pricing roadmap.

Elements of the proposal that the BDI supports and that should be maintained in the further proceedings:

- The **introduction of a ten-year transition period up to 2035 for the phasing out ETS free allocation of allowances**, the introduction of a **test phase** on a selected number of products and focus on direct emissions, the reduced scope of covered products and the mitigation of the associated conversion risk.

- The **exclusion of organic chemicals** from the CBAM pilot period.

Elements of the proposal that the BDI rejects:

- **German industry remains generally opposed to the introduction of CBAMs** given the harsh backlash to be expected from key trading partners, including in the form of WTO disputes, tariff retaliation and accusations of protectionism. Circumvention is also an area of severe concern, given experiences in the trade defence instrument arena. More than one-fifth of total cases in the WTO Dispute Settlement Mechanism deal with violations of the relevant multilateral framework, the Agreement on Subsidies and Countervailing Measures. The draft provisions regarding circumvention (Article 27) remain too narrow, covering only cases based on a minor modification of products. The provisions should also cover cases of exports of products with a lower carbon footprint.

- The **calculation method presented in Annex 3** for determining emissions raises severe concerns regarding **data quality and data availability**. Default values should be set based on the most carbon-intensive production process.

- **Too many important aspects of the proposal remain subject to future delegated acts.**

- The risk of **potential negative impacts on the functioning of the internal market** considering that national solo-runs of national competent authorities remain possible and likely.

5. Proposal for a revised Energy Taxation Directive (ETD)

The BDI supports the revision of the ETD to ensure clear taxation rules for energy products and electricity to contribute to the smooth functioning of the internal market and to avoid distortion of competition.

In view of tackling the climate and environmental-related challenges within the Green Deal the BDI welcomes that the ETD supports the development of alternatives energy products and electricity and continues to recognize the need to support the European energy intensive business. The introduction of a fixed taxation scheme by environmental performance is seen as a good tool to recognize the climate contribution of energy products under the condition that negative effects and market distortion can be avoided.

Competitive energy prices must be guaranteed for energy-intensive businesses and the aviation and waterborne navigation sector must be exempted from taxation due to international constrains.

According to the proposal, however, energy taxation would serve to control consumption and generate additional fiscal revenues, rather than have any steering effect in terms of climate neutrality. As a result, a further increase of energy prices in addition to already existing burdens stemming from other regulations can be expected, which in turn risks new debates around energy taxation exemptions an energy price compensation.

Elements of the proposal that the BDI supports and that should be maintained in the further proceedings:

- **Ranking of taxation by energy content coupled with environmental performance:** We welcome the new concept of taxation with a fixed taxation ranking for each product (Art. 5 para. 1) independently from CN-Codes (Art. 2 para. 6) and support that electricity is always among the least taxed energy sources equal to advanced biofuels and RFNBO. This is an important element for climate protection in transport, because it strengthens the ramp-up of electromobility and CO2-neutral fuels in a way that is open to technology and at the same time fundamentally advances the ramp-up of the hydrogen market. It is positive that reduced tax rates are kept for heating purposes. We welcome that a continuous increase of the tax level is foreseen for the transition period (Art. 9).

- **Tax exemption for the aviation and waterborne navigation sector:** The 10-years mandatory tax exemptions with zero rates for alternative fuels and gas and electricity (Art. 14, 15) is necessary to promote the reduction of carbon emissions. The possible tax exemption for onshore electricity supply of ships in ports (Art. 15 para. 5) is positive, too. The tax exemption on intra-EU cargo-only flights (Art. 14, para. 2) is welcomed to avoid market distortions in international air freight transport. However, passenger aviation would remain subject to taxation which would be distortive to competition in international air transport.

- **Tax exemption of alternatives fuels and gas and electricity:** Analog to the provision for the aviation and waterborne navigation sector the ETD provides as a Member State option the possibility to reduce tax on alternative fuels and gas and electricity to the minimum level. This is an important element for climate protection in transport, because it strengthens the ramp-up of electromobility and CO2-neutral fuels in a way that is open to technology and at the same time fundamentally advances the ramp-up of the H2 market.

Elements of the proposal that the BDI recommends improving during the further legislative process:

- **Transition period to reach minimum tax level:** There must be a transition period to reach the minimum tax levels to moderate the cost increase for energy intensive industries to be able to face the challenges of the transformation period. Especially the increase of taxation of natural gas from 0,54 Euro / GJ to 2,16 Euro / GJ will jeopardize the competitiveness of energy intensive industry. The cost effect is even amplified by the deletion of possible reduced rates for business use.

- **General mandatory tax exemption for alternative fuels and electricity:** In order to boost the production of alternative fuels and electricity the ETD should foresee a mandatory exemption to all sectors. Therefore, the obligation to apply a minimum rate of zero for alternative energy products an electricity in Art. 14 (aviation) and Art. 15 (waterborne navigation) should be opened to all sectors. The limitation to 10 years should be put into question in regard of technological achievements in terms of climate neutrality. In order to support e-

mobility the ETD should not allow Member States to opt for a specific level of taxation to electric use to charge electric vehicles (Art. 5 para. 1).

- **Mandatory tax exemptions instead of Member State options:** The ETD must amplify mandatory tax exemptions. Optional tax exemptions are subject to state aid law, which creates a lot of uncertainty and burden for companies and may lead to double taxation. Companies need security and globally competitive energy prices. Therefore, we recommend changing Member State options to mandatory tax exemptions to the production of electricity in Art. 13 para. 2, the production of renewable electricity in Art. 16b, with the connection with combined heat and power generation in Art. 16c as alternative fuels und gas in Art. 16d and the consumption of energy products and electricity related to the production of energy products in Art. 22.

- **Effective exemptions for energy intensive businesses and industries:**

  - The taxation of the mineralogical industry should not be changed. With the deletion of mineralogical processes in Art. 3, those processes fall under the ETD which will be a big cost burden on this sector in view of third country competitors. The mineralogical industry must be continuously supported to assure its competitiveness.

  - In order to support energy intensive businesses Art. 18 needs to be adopted. The determination of energy intensity must not be distorted by the national energy tax levels of Member States. We recommend using the minimum tax levels to the ratios in Art. 18a to reach a level playing field among industries and Member States.

  - The possibility for agreements in Art. 18b) should be extended by achievements of technological transformation towards climate neutrality.

  - The possibility to fix a tax rate for business use must be restored. This is important to support energy intensive business especially when gas is the key energy source of transition.

  - The yearly adoption of the rates to the index of consumer prices is rejected as this means a massive administrative burden to the companies (Art. 5 para. 2). The revision every five years (Art. 31) should sufficiently offer timeline to adopt the rates.

- **A climate levy instead of a kerosene tax to avoid distortions of competition for European aviation and waterborne navigation sector:** We reject the proposal of unilateral taxation of aviation and shipping fuels (kerosene tax) within the European Union. Distortions of competition to the detriment of European companies in international aviation and shipping should be avoided. This is not the right instrument to incentivise CO2-emission reduction in aviation. Without achieving climate-friendly effects, a kerosene tax would only lead to routes and airlines being placed at a disadvantage in international competition. Instead, a climate levy equivalent to the German aviation tax could be introduced to finance the quota in aviation.

6. Proposal for a revised Effort Sharing Regulation

Introductory paragraph describing the BDI´s priorities for the file and underlying rationale for the position (add facts, figures, references)

Elements of the proposal that the BDI supports and that should be maintained in the further proceedings:

Elements of the proposal that the BDI rejects or for which gaps remain to be filled during the further legislative process:

7. Proposal for a revised LULUCF-Regulation

Introductory paragraph describing the BDI´s priorities for the file and underlying rationale for the position (add facts, figures, references)

Elements of the proposal that the BDI supports and that should be maintained in the further proceedings:

Elements of the proposal that the BDI rejects or for which gaps remain to be filled during the further legislative process:

- *In how far does the above-mentioned carbon removal certification mechanism for the* capturing, utilisation (and storage?) *require alignment with the LULUCF Directive?*

8. Proposal for a revised Renewable Energy Directive (RED III)

The Renewable Energy Directive is the legal framework for the development of renewable energy across all sectors of the EU economy. It establishes common principles and rules to remove barriers, stimulate investments and drive cost reductions in renewable energy technologies, and empowers citizens, consumers and businesses to participate in the clean energy transformation.

Making sufficient amounts of renewable energy available at competitive prices is a decisive cornerstone for the decarbonisation of all sectors and of particular relevance for the European transport, industry and buildings sectors. Regarding the revision of the renewable energy directive, it is therefore crucial to unlock further potentials to curb the availability of sufficient green electricity at affordable prices.

In our view, the revision should also address the lack of energy system integration provisions in the current Directive to deliver on RES-based electrification system integration, RES fuels and hydrogen and circularity. In this context, the introduction of a harmonised system of classification and certification of renewable and low-carbon hydrogen based on guarantees of origin (GOs) will be particularly relevant.

Furthermore, it will be essential to create incentives for low-carbon energy and fuels. The effects in meeting greenhouse gas reduction quotas through Sustainable Aviation Fuels (SAF) and Power-to-Liquid (PtL) must be taken into account. An important prerequisite also here is their availability in sufficient quantities at competitive prices.

With regard to the transport sector, a fast, complete implementation including all detailed aspects within the framework of the delegated acts as well as transposition into national law by 2022 is necessary in order to leave sufficient time for the realisation of required projects.

Furthermore, it is imperative to support the market ramp-up of green hydrogen and PtX via a European model for global PtX tenders (modelled on the German "H2Global" tender project).

Finally, the revision offers the opportunity to simplify and streamline existing permitting procedures.

Elements of the REDIII proposal that the BDI supports:

- **Extending the scope of the Union database (Art. 31a)**: Art. 1 (22) inserts Art. 31a (new), which extends the scope of Union database to RFNBOs beyond the transport sector and enables the tracing of RFNBOs and their life cycle GHG emission.
- **Electricity production from RFNBOs** is recognized and accountable towards the RED target
- **The promotion of Power Purchase Agreements (PPAs)**: The BDI welcomes measures to promote PPAs as a market driven instrument for the deployment of renewable energy sources.
- **The proposed GHG quota for the transport sector**: The amendment provides an ambitious target with a GHG quota of 13 % for the transport sector. It remains to be seen whether this target can contribute to achieving significantly higher national climate protection targets for individual member states. The switch to a GHG intensity target in transport (new Art. 25, 1 (a)) has already proven valuable in Germany. The proposal of an RFNBO sub-target (new Art. 25, 1 (b)) is positive, as it underlines increasing importance of hydrogen and PtX. Also positive are the limitation of conventional biofuels (new Art. 26, 1 (1)) and the introduction of B10 (recital 45 and new Art. 4, 1 (2)).
- **Strengthening the engagement of Member States**: The draft also obliges Member States to consider additional demand for renewable energy to produce RFNBOs.
- **Mainstreaming renewable energy in buildings**: The BDI welcomes the new Article 15a “Mainstreaming renewable energy in buildings” and the intention to set indicative targets for increasing the use of renewable energy in buildings, as the availability of affordable renewable energy is a cornerstone to achieve the climate goals in the building sector. Substantial increases in renewable self-consumption, as lined out in number 15a No. 2, should be incentivised in an appropriate manner, e.g. by exempting tenant electricity from business tax in residential and non-residential buildings.
- **A public sector that leads by example**: Furthermore, the BDI supports the exemplary role of the public sector buildings on national, regional and local level. However, in view of existing funding restrictions at regional and local level, an expansion of obligations should be underpinned by financial support.
- **Certification and training of installers**: The BDI appreciates further, changes made in paragraphs (3) and (4) in Article 18, as the certification, training and availability of installers and designers is of utmost importance. Moreover, the BDI recommends to creating

standardization in the qualification requirements for designers and installers in order to ensure a comparable level of qualification in the EU, e.g. through a common EU-wide curriculum or a certification system. Finally, the BDI honours the insertion of a generic reference to heating systems made in Article 18 (3), which allows for technology openness and innovation.

Elements of the proposal that the BDI recommends improving:

- **A harmonised classification and certification system of renewable and low-carbon gases and fuels based on the carbon footprint remains missing**. We acknowledge that the amendments proposed by Article 19 open up for national classifications and certifications of renewable hydrogen via guarantees of origin. This is a welcome step, however insufficient for establishing a functioning hydrogen market. A reinforced, fully harmonised EU system should be established to foster the cross-border trade of climate-neutral gases in the EU and globally. A certification scheme will also help tracing the origin of the gas traded. It should be further developed in the legislative process. The CO2 intensity/ CO2 footprint should be made tradable independently from the physical commodity (book & claim system) -> mass balance system named in Art. 29

- **Calculation methods**: Changes to calculation methods of the various targets leave questions as to the assessment of the level and interaction of quotas. Gas and electricity from renewable energy sources can only be counted once towards the target while RFNBOs are counted towards the consumption sector (Art. 7, 27).

- **Delivering on demand-side quotas/sector targets depends on the availability of sufficient amounts of renewable energy at competitive prices**: quotas/targets can be a valuable tool to create incentives in end-use sectors; however, the proposal suggests quite a vast number of new targets and sub-targets thereby risking creating a straitjacket while not providing and supply safeguards. To be able to achieve the new quotas and sector (sub-)targets, however, the availability of sufficient quantities of renewable energy at competitive prices is a precondition.

- **A timely and reliable methodology for renewable RFNBOs is needed:** Instead of proposing a delegated act, a new Art. 29a is introduced: RFNBOs can only be counted towards the renewble energy targets if GHG emissions savings are at least 70%. Member States shall require economic operators to prove that sustainability and GHG savings criteria from Art. 29 and 29a are fulfilled by using a mass balance system. This means constraints for the hydrogen market ramp up phase.

- **Postponing the deadline for the Delegated Act RED II on co-processing to 2024** creates another 3 years of ambiguity and jeopardises the transformation of refineries into renewable energy hubs.

- **RFNBO sub-quotas** alone are insufficient to stimulate investments due to the first-mover disadvantage. They must be supplemented by accompanying measures, such as a tendering model for PtX.

- **Very short lead time** for timely implementation of required investment projects until 2030.

9. Proposal for a revised Energy Efficiency Directive (EED)

The BDI believes that an integrated energy system with a resilient EU-wide infrastructure, functioning markets and abundant renewable energy at competitive prices is a pre-condition for reaching climate-neutrality while maintaining industrial value creation in the EU. Sustainable energy is the backbone of the Green Deal and energy efficiency policies form essential part of this.

German industries contribute to increasing energy efficiency gains at home and abroad through innovative and intelligent technologies and materials.

In its proposal, the Commission proposes to raise the level of ambition of the EU energy efficiency target and makes it binding. The revised directive also requires EU countries to collectively ensure an additional reduction of energy consumption of 9% by 2030 compared to the 2020 reference scenario projections (corresponding to the 39% and 36% energy efficiency targets for primary and final energy consumption outlined in the Climate Target Plan). This means that the overall EU energy consumption should be no more than 1023 million tonnes of oil equivalent Mtoe of primary energy and 787 Mtoe of final energy by 2030.

EU countries can help achieve the EU target by setting indicative national contributions, using a combination of objective criteria, which reflect national circumstances (energy intensity, GDP per capita, energy savings potential and fixed energy consumption reduction). The proposal also introduces an enhanced “gap-filling mechanisms” that will be triggered if countries fall behind in delivering their national contributions.

Another key element of the proposal is a specific requirement for the public sector to achieve an annual energy consumption reduction of 1.7% as part of the objective to enhance the exemplary role of public sector across wide range of activities like buildings, transport, water and street lighting. EU countries are also required to renovate each year at least 3% of the total floor area of buildings owned by all levels of public administration. Public bodies will also need to systematically take into account energy efficiency requirements in their public procurement of products, services, buildings and works.

Elements of the proposal that the BDI supports and that should be maintained in the further proceedings:

- The **increased headline target of 9%** to achieve an overall reduction of 36-39% for final and primary energy consumption by 2030
- The given **flexibility for Member States** with respect to implementing the almost doubled annual energy savings obligation (Article 8) to meet the new increased headline target of 9% in 2030.
- **The indicative nature of national contributions to the headline target**: The BDI welcomes that national contributions remain indicative and therefore not binding since the secure the necessary flexibility for Member States in fulfilling the climate goals.
- **A public sector that leads by example**: The BDI approves the provisions made by the European Commission regarding the exemplary role of the public sector in Article 5 and 6 and the renovation obligations of public body. The strengthening of the Energy

Elements of the proposal that the BDI recommends improving:

- **The level of ambition of the reinforced energy savings obligation scheme as such (Art. 8)**: The suggested new savings each year of 1.5% of final energy consumption from 2024 to 2030 is a very significant increase in ambition for which will require granting sufficient flexibility Member State for its implementation via alternative approaches.

- **Removing legislative inconsistencies**: interactions with the EPBD and other directives should be carefully examined with a view to avoiding additional obstacles and bureaucratic hurdles. Also, energy efficiency should not be the sole criterion in public tenders, because it cannot meet all requirements at once. Already at the national level, the available data for the building stock, especially for the non-residential building stock, are often incomplete and difficult to access. The data aggregation of the EU should therefore be checked in terms of its applicability at the national level and the necessary adjustments should be made where assessed relevant. Furthermore, the assumption made for craftsman and engineers might be too low with respect to job creation. The respective numbers should be verified. National training initiatives should be introduced.

- **Clarifying the concrete implications of the introduction of a legal base of the "energy efficiency first" principle,** including for the pending review of the EPBD and new State Aid Guidelines for Climate, Energy and Environment (CEEAG)

- While supporting the **Efficiency First Principle,** the **integration of renewable energies into public buildings** should also be taken into account. The public sector should set an example, particularly regarding the use of renewable energies in buildings. With regards to public procurement, the BDI supports that sustainability, social, environmental and circular economy aspects should be included in a tender, to better encourage the use of high-quality, sustainable industrial products.

10. Proposal for a revised Alternative Fuels Infrastructure Deployment Regulation (AFIR) and Strategic Roll-Out Plan

The regulation lays down binding requirements for the comprehensive development and expansion of an EU-wide network for charging and refuelling infrastructure for all relevant drives and fuels and for all modes of transport: road, airports, sea and inland ports. By presenting a regulation to replace the directive, the Commission is sending an important signal to its member states, because **the comprehensive expansion of charging and refuelling infrastructures is a basic prerequisite for achieving the national and European climate protection targets in transport**. With concrete targets for the different modes of transport, charging points and refuelling stations are to be expanded along the TEN-T network, differentiated according to core network and extended network.

A positive aspect is, that the regulation is fundamentally open to all technologies: electric mobility, charging infrastructures for passenger cars, light and heavy commercial vehicles, alternative fuels, refuelling infrastructures for hydrogen and natural gas and onshore electricity supply on airports and ports. However, recitals 5, 6, 7 and 8 state that in the passenger car sector, the EU Commission is primarily focusing on BEVs and PHEVs, the further use of natural gas must be linked to a clear decarbonisation path, LNG will play a continued role in maritime transport, while only limited use is expected for inland waterways and roads.

It is also right that the EU Commission puts a strong focus on road transport and changes the system to the installed charging capacity instead of the number of charging points. However, it should be noted that the specifications of 1kW per BEV/ 0.6 KW for PHEVs are insufficient for the necessary EU-wide EV ramp-up. In addition, a direct link between the AFI-Regulation and the EU CO2 fleet regulation must be ensured, because the ambitious and binding expansion of the EU-wide charging infrastructure is a basic prerequisite for achieving the strict targets from the CO2 fleet regulation for vehicle manufacturers. For air and maritime transport, the EU Commission is presenting tight schedules. In order to avoid additional burdens on the industries, subsidies will be needed - where the regulation at least allows for the possibility of subsidies in Art. 13, Para. 5.

Elements of the proposal that the BDI supports and that should be maintained in the further proceedings:

- **Changing the Directive into a Regulation:** By presenting a regulation to replace the existing Directive, the Commission is sending an important signal to the Member States that EU-wide and binding charging and refuelling infrastructures are a basic prerequisite for achieving national and European climate protection targets in the transport sector.

- **A comprehensive approach of expanding alternative fuels infrastructure for all modes of transport:** The suggested comprehensive and basically technology-open approach for all relevant drives and fuels and for all modes of transport is positive. Binding expansion targets for charging infrastructure and hydrogen refuelling stations for passenger cars, light and heavy commercial vehicles are an important step in setting the course.

- **Shifting to charging capacity instead of number of charging points for EV-infrastructure roll out:** The changed system, which no longer bases the charging infrastructure on the number of charging points, but on installed charging capacity (at least 1 kW per BEV), is an important step for the future roll out of alternative fuels infrastructure.

- **Expanding infrastructure for aviation and maritime transport:** Targets regarding the installation of a minimum shore-side electricity supply for certain seagoing ships in maritime ports and for inland waterway vessels, an appropriate number of LNG refuelling points in maritime TEN-T ports (Articles 9,10,11) as well as the expansion of electricity supply to all stationary aircraft in TEN-T core and comprehensive network airports (Art. 12) are ambitious but positive objectives.

- **The possibility of granting state aid measures:** The possibility of granting aid for the expansion of infrastructure under Article 13 para. 5 sends a positive signal in terms of making suitable funding concepts for the expansion of the different charging infrastructure available at the national level.

Elements of the proposal that the BDI recommends improving:

- **Road transport - charging infrastructure**

  - The proposal for the ratio of charging power to electric vehicle (1 kW power per BEV, 0.66 kW power per PHEV) is insufficient: an increase to 2 - 3 kW for BEVs and 1.5 kW for PHEVs is required. More realistic basic assumptions must be made: higher energy demand of vehicles, higher share of public charging of 50-60 %.

  - Tighter targets for charging infrastructure in the TEN-T network are required: shorten the distance between charging pools to 40 km (instead of 60 km), double the power provision on site, at least one charging point with 350 kW should also be mandatory for passenger cars.

  - The introduction of a further parameter to achieve a comprehensive coverage also outside the TEN-T network (especially in urban areas): Minimum equipment at country level (e. g. depending on population density), establishing citizens' demand for accessibility of a charging point near their place of residence (reference value: distance in kilometres or accessibility in time),

  - The introduction of a roaming obligation for charging infrastructure

- **Road transport - hydrogen refuelling stations:**

  - Targets for 700 bar hydrogen refuelling stations should be increased (e. g. in terms of doubling the minimum delivery of 2t/day or lower minimum distances than 150 km).

  - Targets should become binding before 2030 (around 2028) to ensure the availability of enough hydrogen infrastructure right on time for the 2030 CO2 fleet targets.

- **Taking national circumstances into account when setting the time frame for the expansion of infrastructure across TEN-T network:** the schedules for air and maritime transport are very tight and additional burden on the sectors will have to be avoided. LNG is not yet permitted in some ports. Even though the expansion of the infrastructure to optimise the availability of LNG is welcome, there is still a need for adaptation at national level.

- **Include establishment of hydrogen infrastructure at airports across the TEN-T core network:** The expansion of hydrogen infrastructure at airports is missing in the proposal for a regulation. This must be considered due to the great decarbonisation potential of air transport. The development of an infrastructure adapted to the conversion of aviation to hydrogen is imperative. The "hydrogen hub at airports" is a key element on the way to the use of hydrogen in aviation. This requires close cooperation with airports, infrastructure providers and users at airports planning and a step-by-step approach to the use of hydrogen to decarbonise - alongside electrification - all airport-related ground transport (heavy-duty logistics, buses, tugs) in the period of 2020 to 2030. This will pave the way for the availability of hydrogen for aircraft in the 2030+ timeframe. Extending the scope of the Alternative Fuels Infrastructure Regulation to airport infrastructure for ground movements would be a crucial further step on the way to a climate-neutral aviation ecosystem by 2050.

11. Proposal for a revised CO2-Regulation on Cars and Vans

Fleet limit standards for passenger cars and light commercial vehicles are in general an important instrument for climate protection in transport, but they can only be effective in a holistic regulatory approach. It is necessary to create a consistent and technology-open regulatory framework across all dossiers of the "Fit for 55 Pact", especially with regard to the revision of ETD, RED II, EU ETS, ESR, AFIR, so that the ramp-up of electromobility and CO2-neutral fuels is made possible. Stricter fleet limits

also require a careful impact assessment with regard to all relevant technologies as well as social and economic impacts. A further tightening of the 2030 fleet limit would significantly increase the already high transformation pressure in the automotive industry - especially for many small and medium-sized suppliers - and would therefore be unacceptable. A de facto ban on vehicles with combustion engines from 2035 onwards through a strict fleet limit of 0 grams CO2/t for passenger cars and a lack of technology openness in regulation would also apply to PHEVs, which are an important bridging technology in the transformation phase. A technology-open implementation of the fleet regulation, which includes a voluntary crediting of CO2-neutral fuels, is therefore indispensable. There is no competition for the use of RFNBOs among the transport modes due to the different needs and types of fuels and the occurrence of by-products in the production processes. Similarly, the voluntary crediting of climate-neutral input materials must also be taken into account. Compliance with the tightened targets, especially the target value for 2035, would only be realistic if all framework conditions are met. The basic prerequisite for this is a direct link to binding and comprehensive expansion targets for the EU-wide charging infrastructure.

Elements of the proposal that the BDI supports:

- The **interim target for 2025** remains unchanged

Elements of the proposal that the BDI rejects or for which gaps remain to be filled during the further legislative process:

- The German industry rejects a **de facto ban on vehicles with internal combustion engines**, as this would also apply to PHEVs, which represent an important bridge technology option.
- An impact assessment is needed to evaluate the energy balance, therefore the **fleet limit increase of -100%** should be later than 2035.
- The **primacy of technological openness must be maintained** to ensure the inclusion of voluntary crediting of CO2-neutral fuels and climate-neutral input materials.
- **Extend benchmark scheme for ZLEV** (including PHEV) beyond 2029.
- **A link to binding expansion targets for the EU-wide charging infrastructure within the AFIR** must be ensured.
- **Support for transformation (funding programmes) and revenues from penalties** should be used to finance transformation support measures.
- **Lack of consequences with regard to the evaluation reports** (scope for adjustments in the event of delayed expansion of the EU-wide charging infrastructure).
- **Build in additional flexibilities** (carry-over/anticipation to subsequent years.
- **Introduction of a well-to-wheel or lifecycle assessment-based regulation** was not pursued further despite a review mandate in existing legislation.

12. Proposal for a revised Regulation on Sustainable Aviation Fuels (REFUEL Aviation)

The initiative sends a positive signal for the sustained introduction and roll-out of sustainable aviation fuels into the market in the pursuit of reducing CO2-emissions in aviation. In order to reach the ambitious CO2-emission reduction targets for the whole transport sector, the use of alternative sustainable fuels is one of the most important levers to achieve this goal. The BDI appreciates the initiative taken by the European Commission to tackle the issue of reducing CO2-emissions in aviation, which is a sector with very limited decarbonisation options to date. It is positive that the European Commission aims at setting up a common framework to avoid national diverging regulations for the aviation sector, which is inherently international and faces global competition.

In implementing the initiative, it remains important to promote the market ramp-up of PtL kerosene products based on green hydrogen in a technology-open approach, in particular, with the aim of building production plants that successfully bring the most energy- and cost-efficient solutions to the market while complying with climate targets.

Competition-distorting additional costs should be prevented or be compensated by appropriate measures in order to exclude traffic shifts to non-European airlines and airports, thus creating carbon leakage. Also, a shift to non-European airports, jet fuel providers and airlines and the associated carbon leakage should be ruled out.

Elements of the proposal that the BDI supports:

- **The sstablishment of a European market for Sustainable Aviation Fuels:** BDI welcomes the initiative to create a European framework that avoids divergent national regulations and has the potential to create a market for sustainable aviation fuels (SAF). A SAF minimum share can be an effective instrument if sufficient quantities are available at competitive prices. The zero-tax rate for renewable aviation fuels provided for in the ETD draft is an important flanking measure.

- **Predefined ramp-up of SAF minimum share until 2050:**

  - The predefined ramp-up of SAF minimum share set out in the initiative is realistic, but a more ambitious target of a SAF minimum share of at least 10% in 2030 would put the aviation sector on an ambitious decarbonisation path to meet EU climate targets, always under the condition of adequately addressing increased costs and avoiding market distortions through appropriate measures. It will send the necessary strong signal to the market to allow production and construction to ramp up quickly, reducing uncertainty and lowering the risk of investment. It will reduce dependence subsidies and the need for taxation.

  - It is also advisable to set a higher minimum share for "synthetic aviation fuel" at a minimum of 2.5% in 2030 in order to take full advantage of emerging power-to-liquid technologies and longer-term synergies with the ramp-up of green hydrogen.

Elements of the proposal that the BDI recommends improving:

- **Ensure regulatory certainty for PtL plant expansion:** In view of the ambitious goals for the ramp-up of SAF, the industry must make timely investment decisions, especially for the first PtL-kerosene plants. For this, essential regulatory issues have yet to be clarified. This includes, for example, clarity about the criteria for sourcing renewable electricity for electrolysis as well as clarification of the accounting and crediting rules for the joint processing of PtL crude and fossil crude oil for the production of kerosene and other products in refineries.

- **Deletion of the refuelling obligation:** It remains questionable whether a refuelling obligation of at least 90 percent of the annually required aviation fuel, as proposed in Article 5, is legally and internationally feasible to prevent the issue of tankering effectively.

- **Avoiding distortion of competition:**

  - The competitive disadvantage caused by the blending obligation exists in particular for international transfer services, which would lose attractiveness from the price increase compared to foreign carriers with non-European hubs. Thus, there should be a competitively neutral funding mechanism for the SAF minimum share that takes into account and circumvents the risk of carbon leakage.

  - The additional costs for passenger air transport and the air freight logistics chain must be compensated, i.e. cost compensation for companies with increases in fuel costs in several areas (e.g. air freight: air and truck transport affected). Distortion of competition within the EU must be avoided in the implementation, e.g. through different subsidisation practices SAF/PtL. One step could be a joint Europe-wide PtL production plan by politics and industry.

- **Establishing a “book & claim” approach in complying with the SAF minimum share:** A “book & claim” approach, which provides for SAF to be credited if it was purchased by an airline but could not be refuelled by the airline, could also be a helpful step towards further promoting the ramp-up of SAF.

- **Earmarking of fines to reinvest in SAF projects:** Furthermore, revenues acquired from fines, as provided for in Article 11, should be invested in SAF projects to strengthen the market ramp-up as well as to reinvest in the sector.

- **Obligations of owners of fuel infrastructure at Union airports:** The responsibility for the fuel infrastructure “necessary for the delivery, storage and uplifting of such fuels” should, contrary to the provisions in Article 6, be in the hands of the owner of the fuel infrastructure at Union airports and not Union airports. In principle, the roles of the stakeholders need to be differentiated. airlines, fuel suppliers and other stakeholders need to be differentiated. Today, on many airports, the fuel infrastructure is owned and operated by fuel suppliers, joint ventures between fuel supplies and sometimes airlines as shareholders. The current Ground Handling Directive stipulates the possibility to have fuel supply operated by third parties instead of the airport for Centralized Infrastructure. With the proposed changes in the RefuelEU Aviation regulation, responsibilities are redistributed without need, which could potentially lead to less cost efficiency, loss of know-how and difficulties in the transition process.

13. Proposal for a revised Regulation FUELEU Maritime

With this initiative, the EU is setting a clear path for the need for sustainable alternative fuels (low-emission and climate-neutral sustainable alternative fuels and energy supply) in shipping. BDI welcomes the EU's move to address CO2 emissions in shipping, which so far has had only limited options for decarbonisation. It sets out a clear reduction path, even without a prescriptive regulation. This target-based approach must take into account the possibilities for reducing GHG intensity, e.g. through the availability of alternative fuels and shore-side electricity in ports, in order to avoid distortions of competition and disadvantages for the European maritime industry and supply chains. The promotion of sustainable alternative fuels is an important step. Here, as with the ReFuelEU Aviation initiative, it needs to be ensured that uniform framework conditions are created in order to avoid diverging national efforts and to do justice to the international character of shipping. Alternative fuels are an important building block for the transition to low-carbon mobility. This requires continued substantial funding for research and market development as well as a precise regulatory framework. The initiative provides helpful funding by earmarking sanction payments for projects supporting renewable and low-carbon fuels in the maritime sector to support the rapid introduction of renewable and low-carbon fuels in the maritime transport sector. It remains paramount to avoid distortions of competition.

Elements of the proposal that the BDI supports:

- **Earmarking of penalties to fund GHG intensity reducing projects:** The earmarking of revenues from non-compliance penalties, as provided for in Article 21, to support projects for the market ramp-up of sustainable alternative fuels and the construction of bunkering facilities and onshore power connections in ports, is very positive.

- **Securing infrastructure development in ports:** The expansion of the infrastructure, especially with regard to onshore electricity supply in ports, must be guaranteed and eligible for funding. This is because the electricity/energy supply must also be able to cover the demand in the ports. For this the ETD draft and respectively AFIR draft are important flanking measures to guarantee to ensure that the obligations of the initiative can be met.

Elements of the proposal that the BDI recommends improving:

- **Maintaining a level playing field in international shipping:** It remains questionable whether the extension of the scope of application with regard to the energy use of vessels between EU member states and third countries can be implemented at 50 percent on an international level and whether that way a level playing field can be guaranteed.

14. Conclusions

A strong and innovative industry is a prerequisite for Europe to win the global race in climate innovation and digitalisation with its own technologies and concepts on an equal footing with the United States and China.

The European Commission, Parliament and Council should clearly commit to Europe as an attractive and forward looking industrial and investment location: Industry needs to be equipped with the necessary “Fit-for-55” framework to be able to successfully navigate through this transition of unprecedented scale. Our companies of all sectors and sizes are committed to the EU´s climate goals.

Impressum

Bundesverband der Deutschen Industrie e.V. (BDI)
Breite Straße 29, 10178 Berlin
www.bdi.eu
T: +49 30 2028-0

Redaktion

Referent …….
T: +49 30 2028-0000
e.mail@bdi.eu

BDI Dokumentennummer: D 0XXX