

THE ‘FIT FOR 55’ PACKAGE

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1. Executive Summary

- The 'Fit for 55' package significantly deepens and broadens the decarbonisation of Europe's economy to achieve climate neutrality by 2050. **BusinessEurope supports the European Green Deal and is committed to the transition to a climate-neutral economy by mid-century.** European industry is ready to take its share of responsibility and to bring solutions. The transition is expected to have positive effects such as growing markets for clean technologies.
- At the same time, determination to a climate-neutral economy is no reason to overlook challenges and transition costs. They are likely to be significant and therefore need to be thoroughly assessed and addressed in order to minimise them as much as necessary. **Climate ambition must go hand-in-hand with industrial competitiveness** and feature the zero- and low-carbon solutions to deliver on its objectives. To be able to deliver, proper framework conditions from the continuous availability of renewable and low-carbon energy at competitive prices and a historic investment programme need to be in place. Overall investment conditions need to be improved, bottlenecks removed and investments in industrial sectors accelerated.
- This paper presents **BusinessEurope recommendations on ten of the legislative proposals.**
- While the **EU ETS** (Emissions Trading System) follows the 2030 climate ambition, it needs improvements on other key aspects. Specifically, the increase in ambition should go together with sufficient carbon leakage protection for direct and indirect emissions. The participation of new sectors (buildings and road transport) should be streamlined, especially for smaller fuel suppliers.
- The **Social Climate Fund** needs a careful assessment, notably to avoid duplication with existing EU-level funding mechanisms. For the fund to have the most long-lasting impact, it is important that the measures financed represent a good balance between direct income support and investments, with the later much more likely to protect vulnerable populations in the long-term.
- The **Carbon Border Adjustment Mechanism (CBAM)** could prove to be a tool to fight carbon leakage and level the playing field. Ensuring WTO compatibility and avoiding retaliation from trading partners is key not only for CBAM sectors, but also for the EU industry as a whole. The CBAM should not be considered as an alternative to free allowances, but should complement them, until the mechanism has proven its ability to effectively prevent carbon leakage and level the playing field.
- The proposal to replace the current volume-based taxation structure in the **Energy Taxation Directive (ETD)** with a system based on energy content is a positive step forward to intensify investment in greener alternatives. However, we are strongly concerned about measures proposed in the ETD which will particularly harm the competitiveness of energy-intensive industries. Less favourable treatment for these sectors will make it less attractive for them to invest, including in the energy transition.
- Making renewable and low-carbon energy cheaper and more widely available is crucial. It remains to be seen whether targets for renewable energy consumption in industry, as proposed in the **Renewable Energy Directive**, is the right approach. The attention on fast-track permitting processes, cross-border cooperation and Power Purchase Agreements is positive.



- The **Energy Efficiency Directive** should focus on energy intensity instead of capping energy consumption as this risks limiting the potential for industrial decarbonisation. Innovative technologies for decarbonisation can be very energy intensive. The audits mandated by the directive should not be intertwined with provisions under the EU ETS.
- The 100% reduction, tailpipe-only 2035 target for **CO₂ emissions for cars and vans** is exclusionary and not in line with the principle of technological neutrality. It disincentivises investments into crucial technologies such as liquid low-carbon and renewable fuels.
- The extension targets for alternative fuel infrastructure should be more ambitious to enable the emissions reduction aimed for in the package, in particular for road transport and maritime. The **Alternative Fuels Infrastructure Regulation** should be complemented by clearer enforcement provisions.
- The blending mandate, proposed in the **ReFuelEU Aviation Regulation**, coupled with an uptake obligation, should provide for sufficient flexibility. At the same time, it should be flanked by supporting measures that ensure that the supply chain for sustainable aviation fuels is developing in line with the demand.
- The emission intensity standard proposed in the **FuelEU Maritime Regulation** should be more flexible to recognise alternative production pathways for shipping fuels. As the proposal goes beyond the International Maritime Organisation (IMO) framework, the Commission should engage proactively with trading partners to avoid adverse reactions, and closely monitor any potential for carbon leakage.



2. Introduction

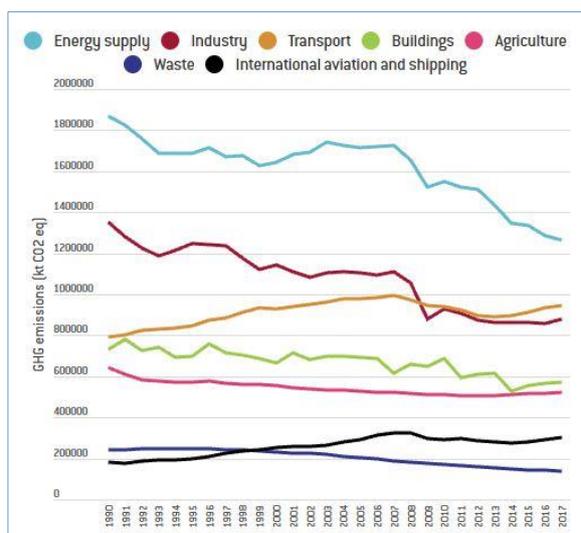
The 'Fit for 55' package intends to reduce the EU's greenhouse gas emissions by 55% by 2030 compared to 1990. The thirteen legislative proposals significantly deepen and broaden the decarbonisation of Europe's economy to achieve climate neutrality by 2050. The transformative nature of the package will make climate policy more visible in the daily life of Europeans and companies. In order for European businesses and industry to deliver it is imperative that the feasibility of the plans and the costs involved are taken into account.

This paper presents BusinessEurope comments on ten of the legislative proposals, providing recommendations where we believe changes are needed.

COMMITMENT

BusinessEurope supports the European Green Deal and is committed to the transition to a climate-neutral economy by mid-century. The European industry is ready to take its share of responsibility. Building on the achievements so far (see graph¹), the European industry will continue reducing its carbon footprint and to bring zero- and low-carbon technologies and solutions to society (see examples on [ClimateYourBusiness](#)).

The innovation angle is critical to the success of the transition. As the International Energy Agency pointed out², most of the global reductions in CO₂ emissions through 2030 come from technologies readily available today. But in 2050, almost half the reductions would come from technologies that are currently at the demonstration or prototype phase. In heavy industry and long-distance transport, the share of emissions reductions from technologies that are still under development today is even higher. Regulations here have to pave the way for development and market uptake of new technologies, but also will have to recognise the feasibility within companies of reducing their emissions.



The transition is expected to bring positive effects, such as growing markets for clean technologies, new wave of technological progress, abatement cost curves shifting downward, etc. For instance, the EU exported €71 billion in clean energy technologies between 2012 and 2015, creating a €11 billion trade surplus³.

At the same time, Europe's decarbonisation cannot be a lone example, it has to set off a cascade of similarly concrete steps by other big emitters. Accounting for 8% of global CO₂ emissions, the EU must push others to step up their actions as well.

¹ Greenhouse gas emissions by sector. Bruegel on data from European Environment Agency (2021).

² International Energy Agency, May 2021. Net Zero by 2050 A roadmap for the global energy sector.

³ European Commission, 2019. Reflection paper – Towards a sustainable Europe by 2030.



CHALLENGES

Because of the magnitude of the efforts involved and the pace of the transformation implied, the accelerated transition is bound to have profound economic and social impacts. Challenges will be numerous such as the huge increase in investment needs, the risk of closures and carbon leakage, difficulties with labour reallocation, etc.

Determination over the transition to a climate-neutral economy is no reason to overlook challenges and transition costs. They are likely to be significant and therefore need to be thoroughly assessed and debated in order to minimise them as much as necessary.

The current increase in energy prices also shows how sensitive our economies are to energy prices and should therefore be thoroughly considered when discussing the 'Fit for 55' package.

REALITY CHECK

The overall direction set by the Fit for 55 package is right, but the economic and social viability must be checked carefully. It is critical that it does not weaken the competitiveness of our industries. A strong industrial base, with competitive companies that generate wealth, is key to mobilise the necessary investments as well as to keep and expand high-quality industry in jobs in Europe. Large-scale job-losses, as well as large increases in costs for consumers will threaten popular support for the measures, especially when consumers do not have the option to switch to climate-friendly alternatives or otherwise lower their GHG emissions. Without popular support, the green transition will not happen, as the political situation will not allow the necessary action.

The package must undergo a reality check to see what is workable and what needs to be adjusted to make the transition consistent with our climate neutrality goal (e.g. gradual phasing out of fossil-fuels), but also economically and socially successful. This paper shows that important changes are necessary to strike the right balance and to ensure the right framework conditions, in particular:

- A greater emphasis on making renewable and low-carbon energy cheaper and more widely available.
- A more coherent approach to avoid blocking investments in industrial sectors that need them the most to transition and master the significant increase in ambition.
- Dedicated support for the breakthrough technologies that will be needed to make significant strides in the deep decarbonisation of hard-to-abate sectors.
- A carbon leakage regime that switches to new instruments only after they have been proven to be effective.
- More flexibility in the carbon market, with the ability to adapt to react to significant changes in economic activity.

Lastly, it is important that the cumulative impact of the different legislations (e.g. ETS, Energy Taxation Directive and aviation/maritime) on the covered economic activities is much deeply assessed and understood.



3. EU Emissions Trading System

KEY MESSAGES

1. BusinessEurope supports the objective to ensure a central role for the ETS towards 2030. An EU-harmonised and market-based approach with effective carbon leakage provisions is the right regulatory framework to move ahead. While the Commission's proposal on the reform of the ETS follows the 2030 climate ambition, it is also in need of improvements on other key aspects. Specifically, the increase in ambition should go together with sufficient carbon leakage protection for the costs related to direct and indirect emissions. It is also crucial that the ETS reform provides additional support for investments in breakthrough technologies to decarbonise the European economy.
2. According to the Commission's own estimates, the reductions in emission intensity benchmarks in the sectors covered by the ETS will not be sufficient to stay below the maximum number of allowances for free allocation regulated by the auctioning share towards the end of Phase IV. The application of the Cross-Sectoral Correction Factor (CSCF) should nevertheless be prevented by adapting the auctioning share or supplementing the budget with allowances from the Market Stability Reserve (MSR) that otherwise would be deleted. Also, more support for industry is needed to bring the necessary innovations into widespread use.
3. It is positive that the inclusion of buildings and road transport into the ETS is happening via separate systems. However, participation in the market should be streamlined, especially for smaller fuel suppliers. It is crucial to ensure that the revenues from the new sectors are being re-invested into low-carbon solutions.

MAINTAINING FLEXIBILITY AND CONSISTENT MARKET DEVELOPMENT

Linear Reduction Factor (LRF)

One of the main challenges for the upcoming reform of the ETS will be to reconcile the increased ambition with safeguarding the international competitiveness of the companies taking part in the ETS, as well as their ability to dedicate significant amounts of capital for investment into climate-friendly technologies and business models.

- BusinessEurope maintains that the best instrument for increasing ambition is the LRF (Art. 9), in combination with a robust level of carbon leakage protection. The LRF provides for the most predictable and reliable development of the market, especially when compared to rebasing. At the same time, it must be avoided that an increased LRF undermines the availability of free allowances or increases the risk of triggering the Cross-Sectoral Correction Factor (CSCF) (see below). In addition, the one-off deletion of allowances (re-basing), as mentioned in the current proposal (Art. 9, first sentence) will add a supply shock to a system in which prices have already climbed far beyond the Commission's expectations in the impact assessment. While an increasing ETS price does in theory give a greater incentive for decarbonisation, that effect is



not being realised if carbon costs are rising so quickly that they are curtailing company budgets for investments, or research and development.

- Furthermore, the revision of the ETS should address the increasing role of financial speculation on the EU carbon market and counteract its negative impacts on compliance operators exposed to international competition. Abrupt price increases driven by speculation make operations more difficult for companies without appreciably accelerating the decarbonisation process.

Availability of alternative energy/renewables

A significant element regarding cost effects of the ETS is the price and availability of alternative energy sources including renewables. Increased demand for low-emission and emission free energy by industry and other sectors is likely to lead to higher prices and possibly scarcity.

- It is therefore important to improve availability wherever possible including by broadening the scope of admissible raw materials also taking into account the different situation in EU member states, for instance with respect to the production of biofuels.

Auctioning share

Under the current system, an increase in the LRF (as well as possibly re-basing), brings with it a decreasing supply of freely allocated allowances and therefore a greater likelihood for the activation of the CSCF, even as the European Commission puts more pressure on the benchmarking process to reduce the allocation per installation (see below). The benchmarks need to correctly reflect the average of 10% best installations, while the application of the CSCF should absolutely be avoided, which would lead to market share being lost to international competitors.

- Therefore, the reform should tackle the overall limit on free allocation, i.e. the auctioning share (57%) fixed in Art. 10.1 of the current directive. The present revision should provide for the possibility of a decrease in the auctioning share when necessary to ensure the availability of freely allocated allowances and avoid the application of the CSCF. Such a reduction is consistent with the declining share of emissions from the power sector compared to the overall emissions covered by the EU ETS. Alternatively, free allocation could be supplemented with allowances from the MSR otherwise to be deleted (see next point). For the future, lawmakers should consider to dynamically link the share to key indicators of economic activity in Europe.

Market Stability Reserve (MSR)

Unfortunately, the Commission has foregone to use one of the instruments that could have most easily contributed to preventing overheating on the carbon market while preserving environmental integrity: the Market Stability Reserve.

- By maintaining an intake rate of 24% (except for a minor positive change that eliminates the so called “threshold effect”, MSR Decision Art. 1.5), the Commission de-facto increases upward price pressure beyond the supply and demand functions determined by the cap. More concerningly, by eliminating all allowances over the limit of 400 million, the market is deprived of duly issued allowances, which should have been used to ease the pressure on the market and ensure sufficient free allocation and help avoid a CSCF. BusinessEurope therefore opposes the cap at 400 million allowances and the cancellation of allowances in case of a CSCF.
- In particular, a triple supply squeeze, in which the new LRF, a possible rebasing and the cancellation of allowances in the MSR all enter into force at the same time and put pressure on



the ETS spot price, and thereby on the competitiveness of internationally exposed sectors, must be avoided.

- Overall, the MSR should support a stable price signal, which increases at a more predictable rate, compatible with the attainment of EU climate objectives.

ENSURING EFFECTIVE CARBON LEAKAGE PROTECTION

Planned phase-out of free allocation for sectors covered by the CBAM

Similarly to the CBAM regulation, the ETS proposal sees a CBAM charge as an *alternative* to free allocation, stating that in principle there should be no more free allocation for the covered sectors (recital 30). There is a transition period from 2026 to 2035, with a yearly decrease in free allocation of 10% (Art. 10a.1a), and an adjusted CBAM charge. As [previously](#) stated, BusinessEurope disagrees with this approach, emphasising that the CBAM should be seen as a complementary instrument to free allocation until the CBAM is fully operational, effective and does not lead to carbon leakage, thereby ensuring a truly level playing field.

The increase of the climate ambition exposes Europe to significant vulnerabilities, both from an economic, environmental, and social perspective, due to the risks of carbon leakage, despite the fact that the limited EU contribution – around 8 % - to the global GHG emissions will strongly limit the positive effects of the very significant EU efforts. Higher costs for EU industries, together with no comparable carbon constraint for extra-EU competitors, requires strengthened carbon leakage protection.

- Therefore, full benchmark-based free allocation and indirect costs compensation need to remain fully effective also for CBAM sectors at least until 2030 to allow companies to focus on low-carbon investment and to assess the effectiveness of the new instrument as well as safeguard the competitiveness of EU exports. After 2030, the Commission should regularly assess the effectiveness of the measure in preventing carbon leakage in the EU and evaluate the position of EU producers on third markets. This assessment should be the basis for decisions on whether to start phasing out free allowances for the sectors covered, and at what speed. In case carbon leakage is found to persist or increase, or if European producers lose market share abroad due to higher carbon costs, there must be the possibility to delay or suspend a further reduction in free allocation. This should be provisioned by introducing a clear review clause.
- The regular assessments are also necessary to ensure the environmental integrity of CBAM: if European products lose market share at home and abroad, this would lead to an increase in overall global emissions, since EU producers are on average less carbon-intensive than their international competitors.
- If free allocation is reduced after 2030 for the CBAM-covered sectors, fully WTO-compliant export supporting measures, which safeguard the competitiveness of EU producers on third markets, should be considered.

Increase in the maximum annual reduction rates for free allocation benchmarks (1.6% → 2.5% from 2025)

It is important to avoid the application of the Cross-Sectoral Correction Factor (CSCF) as much as possible.



However, the increase to 2.5% maximal annual reductions in the benchmarks, up from 1.6%, together with the overall LRF rise, will present a difficult challenge for sectors (Art. 10a.2 / 10a.1). This is especially true as another review of the rates is mandated before 2026, at which time the newest reform will not even have taken effect. Therefore, decisions will be taken without the effects of the previous reform having been properly assessed. Again, with a more flexible approach to the use of allowances and the auctioning share, these uncertainties could have been avoided, by avoiding the application of the CSCF.

- Benchmarks should be based on the representative part of production activity and reflect the economic and technical reality. It is also crucial that the fall-back benchmarks for heat, fuel and process emissions are tightened in line with the availability of resources (incl. biomass), infrastructure and low-carbon technologies.
- The European Commission's impact assessment (p. 77-84) also lays out that under the chosen policy option the emission reductions from ETS sectors still are likely not enough to be in line with the LRF, even with the new benchmark reduction rates, which is why BusinessEurope is arguing in favour of increased flexibility in the auction share (see above). Given this and the associated risk of application of the CSCF, additional efforts to support research and development for industrial decarbonisation are imperative (see below).

Modification of benchmark rules in secondary legislation

The proposal to modify product benchmarks in secondary legislation without more precise legal provisions in the directive (e.g. possible inclusion of low-carbon technologies) creates major uncertainty. This is also because such changes would take effect in 2026 (with a likely significant downward impact on free allocation levels) but would be set very shortly before (around 2025). Such timeline is counterproductive for investment planning since it overlaps with long investment cycles, some of which have been launched very recently.

- Benchmark rules, which have been revised very recently, need to take into account that the transition to new technologies, which is highly dependent on their availability and related externalities (e.g. energy, H₂, input materials, logistics and storage, etc.) will be gradual and will require sufficient time considering also the timeline for permitting procedures.

In particular, if new technologies are included too quickly in the existing product benchmarks, benchmarks and free allocation could decrease sharply for the entire sector when such technologies represent still a minor percentage of the market. This would reduce prematurely carbon leakage protection for the entire sector and increase the risk of higher imports from third countries rather than incentivising such technologies in the EU.

- If any modification of benchmark definitions is introduced to reward low-carbon technologies, this should not reduce prematurely free allocation for existing installations included in the benchmark curves.

Conditionality of free allocation on the implementation of audit recommendations

Under the proposal, companies are at risk of losing up to 25% of their duly allocated amount of free allowances if they cannot prove to have followed certain recommendations from the audits mandated in Art. 8.4 of the energy efficiency directive (Art. 10a.1).



Due to the massive variation in the speed and cost of industrial decarbonisation as well as the different potentials for efficiency gains in different industries, a one-size-fits-all approach for different industries is problematic. Free allocation as a measure is meant to counteract carbon leakage - the audits mandated by the Energy Efficiency Directive (EED) are a distinct policy measure pursuing different aims, and as such the two should not be unnecessarily intertwined.

- For companies this new requirement would mean an added layer of bureaucracy and a significant interference into the autonomy of their investment decisions. In addition, a conditionality approach which would apply to each installation individually may prevent companies with different sites across the EU from focusing their decarbonisation investments on some specific sites – such move would deter large investments which are needed when implementing breakthrough technologies for decarbonisation.

USE OF REVENUES AND SUPPORT FOR BREAKTHROUGH TECHNOLOGIES

Use of revenues

It is positive to see the sources of funding for the Innovation Fund (Art. 10a.8) increased and expanded. Industry is clearly in favour and in need of increased support for funds targeting effective decarbonisation projects.

- However, increasing the fund by cutting free allocation, both from the CBAM sectors as well as the MSR and the market overall, risks limiting the capacity to invest in low-carbon solutions by all companies. At the same time, the Innovation Fund is now to support technologies both for Annex I (stationary installations) and Annex III (buildings and road transport), risking to stretch resources thin.

Furthermore, it is good that the Innovation Fund will become accessible for more technologies through carbon-contracts for difference (competitive bidding) and that more options are available for projects that are closer to market viability, including CCS/CCU⁴ projects based on a high degree of GHG mitigation. At the same time, clear principles and regulatory provisions are needed for CCS/CCU technology certification in general, so that investors can be sure that their investments fall under the exemption for CCS/CCU in the new Art. 12.3b.

In particular, the proposal risks to endanger this business case through a very narrow definition of the “exemption from the obligation to surrender allowances”, which would be restricted to (i) permanent geological storage and (ii) the CO₂ chemically bound in a product. In addition, the omission of the requirement that CO₂ should be “released in the atmosphere” when defining an “emission” risks opening the gateway to CO₂ accounting with the capture plant. If this is the intention, such approach raises doubts about the financial viability of carbon capture and use projects. It is clear that some CO₂ utilisation projects – such as the use of CO₂ in synthetic fuels – need a serious debate on carbon accounting, since the captured CO₂ can eventually be released when it is used (for instance, by the airplane when consuming the synthetic fuel). However, the legislative ground for carbon capture and utilisation (CCUS) in the proposed directive is too narrow.

- In light of this, the revised ETS Directive should reconfirm that there is an emission of CO₂ only if and at the point of release into the atmosphere. A transfer of CO₂ to another operator does

⁴ Carbon capture, storage and/or utilisation.



not result in an emission for the transferring plant. The ultimate use of CO₂ should not be the determining factor in allocating the CO₂.

- The Innovation Fund, as well as the exemption (Art. 12.3b), should not discriminate between technologies that all can have a significant impact on GHG emissions, such as hydrogen produced with electricity as well as hydrogen production based on natural gas with effective CCS/CCU.

The obligation for EU member states to spend all their auctioning revenues (instead of 50%, min., Art. 10.3)⁵ on energy and climate-related purposes is positive as it should free up additional resources for investments in industry as well.

- However, as mentioned above, given that by the Commission's own estimate, this might not be sufficient to bring down emissions in line with the sinking cap, further avenues for funding should be actively explored, both on EU and on member state level.
- The Modernisation Fund should not set new conditions for drawing funds which would jeopardise planned investments in the energy transition especially in district heating (exclusion of natural gas from support).

EXTENSION INTO NEW SECTORS

New trading system for road transport and buildings (Chapter IVa; Art. 30a – 30i; Annex III) from 2026

According to the proposal, from 2026 onwards the release of fuels for use in buildings (primarily heating) and road transport (Annex III activities) will fall under their own, separate emission trading system. The initial cap will be based on the reference emissions from the Effort Sharing Regulation, with an LRF of 5.15% to be applied from 2024 and 2026 being the first year for auctioning (no free allocation) (Art. 30.c). From 2028 onwards, the LRF will be 5.43%, subject to change only if the sectors' own MRV data, which will be collected from 2024 onwards, show a significant divergence from the assumed cap based on the ESR.

- With this extension the ETS enters new territory, pricing GHG emissions in sectors much closer to final consumers. In this regard, it is positive that the extension to the new sectors has been enacted as separate trading systems first, as the market fundamentals (price elasticity, abatement costs etc.) are just too different compared to the rest of the ETS, making it impossible to merge the two systems at this point without creating a high degree of volatility. The development of this market should be monitored closely, with no further changes in its regulatory framework until 2030, when the impacts are apparent.

Defining the regulated entities in line with the responsibilities for excise duties and making the act of releasing fuels for consumption the regulated activity (Annex III) will facilitate the application of the measure, as it reduces the number of regulated entities. However, this will still add a large number of

⁵ Although many member states already today use more than 80% of their auctioning revenues for energy and climate-related instruments, in some member states ETS revenues are still not earmarked for decarbonisation efforts by industry.



market participants, many of whom have no prior experience with emission markets, hedging strategies, reporting deadlines etc.

- In the current proposal, these entities are being confronted with significant additional reporting obligations, e.g. about the precise amounts sold of every type of fuel, their respective end uses, and the corresponding emissions. Here a facilitated reporting procedure should be included either in the directive, or in the member state's implementing measures, especially for market participants falling under the SME thresholds.

With this extension (together with new fuel taxation rules, necessity for engine technology upgrades, as well as the fuel requirements under ReFuel Aviation and Fuel EU Maritime) a whole package of new cost factors will be placed on the logistics sector specifically. The Commission should swiftly provide a detailed assessment of the combined impact of these measures on the sector.

- As increased transport costs will be passed through to virtually all other businesses and consumers, the downstream effect on competitiveness, both on the single market and on third markets, should also be assessed. These evaluations should be concluded in time for the co-legislators to introduce changes to the legislation if needed.

With 25% of the new revenue being dedicated to the new Social Climate Action Fund (Preamble (52); Art. 30d.5b) and the possibility for EU member states to take the residual revenue and use it for household support as well (30d.5a), the contributions towards social stability measures are quite substantial.

- On the other hand, the proposal risks underfunding research and the implementation of breakthrough technologies through the Innovation Fund, which will make these emission abatements possible in the first place. With the new demands on the Innovation Fund (stationary installations as well as building and transport solutions eligible) the 150 million allowances dedicated to the Innovation Fund from Chapter IVa activities will likely be insufficient.
- The excessive price mechanism in the new section of the ETS (Art. 30h) which allows for the automatic release of allowances from the (separate) MSR in case of sudden and sustained price spikes is an innovative feature – the transposition of a similar feature to the “traditional” ETS could limit the effect of speculation and externally fuelled price rallies.

Inclusion of maritime transport (Art. 3a – 3h):

With the integration of maritime transport into the “traditional” ETS, the European Commission proposes to go further than the current international consensus at the IMO, risking a similar isolation to when the EU tried to expand its ETS on outgoing and incoming international flights in 2012. By choosing to put a price on 50% of the emissions from outgoing and incoming voyages (Art. 3g) the EU is risking to be accused of extraterritorial enforcement, as it was in 2012.

- Making this external dimension conditional on agreement with trading partners (ideally at IMO level) would reduce this risk significantly.

Furthermore, the Commission also decided to integrate maritime shipping directly into the existing ETS; instead of the less drastic approach of establishing a separate emission trading system first, as it



proposes to do for road transport and buildings. The gradual phase-in from 2023 to 2026 (Art. 3ga) is helpful but does not address the underlying problem of divergent market fundamentals.

- The maritime transport sector faces similar issues here to buildings and road transport, namely abatement costs that differ substantially from the other sectors in the market, which can lead to increased volatility and sudden price hikes. Furthermore, the European Commission in its impact assessment found that both a distinct trading system for maritime transport as well as an integration into the current system would likely lead to similar outcomes in terms of emissions saved (p. 146).
- As the proposal does not include free allocation for the shipping sector, the impacts will be substantial, but will vary in different regions. Winter and ice conditions in the Baltic Sea region for example pose a particular challenge when trying to save fuel and emissions – this added hardship should be recognised in the directive via a compensation mechanism. Countries highly dependent on maritime from the Mediterranean region will also be more impacted.

Additionally, as the impact assessment acknowledges, the measures increase the risk of increased transshipment and diversion of trade flows away from Europe. This however is not addressed in the legislation.

- Legislators should consider countermeasures if this form of carbon leakage does manifest. In this regard, a global approach to pricing carbon emissions in maritime shipping at IMO level would have been much preferable to unilateral EU action. The EU should continue to push for such a system and align its carbon pricing with it once one emerges.
- Furthermore, as with the extension to road transport, the combined effect of all measures affecting maritime shipping (ETD, FuelEU Maritime, ETS extension), both on the sector's own competitiveness, as well as on downstream businesses, must be assessed.



4. Social Climate Fund

KEY MESSAGES

1. The Social Climate Fund needs a very careful assessment as it represents a new trans-European redistribution of finance and presents risks of duplication with existing EU-level fund mechanisms.
2. In any case, for such a fund to have the most long-lasting impact, it is important that the measures financed represent a good balance between direct income support and investments. Productive investments, with clear EU added value, have the best potential to protect vulnerable populations and sectors in the long term.
3. The fund should not only target consumers and micro-enterprises as beneficiaries, but also support SMEs. The latter face many of the same risks in terms of energy expenditure as consumers do, are a vital part of their communities, and often are better suited to implement investments effectively.
4. Involvement of the social partners, at an early stage, and on regional, national and European level is key. In order to avoid some of the pitfalls experienced with the recovery plans, social partners should be key interlocutors for governments when they design Social Climate Plans.

The extended emissions trading system has been proposed to reduce the emissions from the buildings and road transport sectors. Social consequences of this development are inevitable: energy prices will increase as well as the cost of transport. The Social Climate Fund is established for the period 2025 to 2032 to tackle the social impacts related to the emissions trading for the sectors of buildings and road transport (Article 1).

It is important to note that there are already several funds at EU level to support various actors impacted by the green transition, e.g. the Just Transition Mechanism and Fund, Modernisation and Solidarity Fund, etc. Furthermore, it is in the competence of member states to define their social policies and the necessary budget allocations to implement support measures. From this perspective, the proposed Social Climate Fund needs a strong business case to be approved at the EU level.

- The Social Climate Fund should go through a very careful assessment, notably because of the risk of duplication with other existing EU-level funding mechanisms and to avoid interferences with social policies that are of national prerogative.
- Furthermore, the fund must not place any burden on the frontrunners in the transition, which already have substantial frameworks for the decarbonisation of the respective sectors in place.



AVAILABLE BUDGET

The financial envelope of the fund is EUR 23.7 billion for the years 2025-2027 and EUR 48.5 billion for the years 2028-2032 (Article 9), which corresponds in principle to 25% of the expected revenues to be accumulated from the auctioning of allowances within the emissions trading for buildings and road transport. Each EU member state is expected to establish its Social Climate Plan (Article 3) and contribute to at least 50% of the total estimated costs of the national plan. Member states can use the revenues from auctioning of their allowances under the emissions trading for the two new sectors (Article 14).

PROPOSED MEASURES

The fund can be used to finance temporary income support to reduce the dependence on fossil fuels in the medium to long term. This can be done through improving the energy efficiency of buildings, decarbonisation of heating and cooling of buildings, transition to energy from renewable sources and granting improved access to zero- and low-emission mobility and transport. The plans should also include measures and long-term investment facilitating transition to a “zero emissions” economy, notably ensuring affordable and sustainable heating, cooling, and mobility.

- BusinessEurope believes that it is important to ensure a good balance between the temporary income support, which is a passive measure mitigating effects of the increasing price of fossil fuels, and investments, which are crucial for the structural change and transition to a climate-neutral economy. Additionally, the specificities of the buildings and road transport need to be taken into account as they will define the horizon and the volume of the necessary income support/investments.

BENEFICIARIES

The increase in the price of fossil fuels will have significant social and distributional consequences and may hit vulnerable households, micro-enterprises and transport users the most. These individuals usually belong to a lower income group and spend a larger part of their incomes on energy and transport. In certain regions they do not have access to alternative, affordable mobility and transport solutions. It is important to note that women are likely to be particularly affected by increasing carbon prices as they represent 85% of single-parent families across the EU. Another group that can potentially be seriously impacted are people with disabilities that live in private households and rely heavily on traditional transport means, for example private cars.

The vulnerable groups will be impacted to a various extent in different member states. The impact is likely to be stronger in member states, regions and population with lower average income. The distribution key for the fund takes into account the uneven impact expected across and within EU member states.

- Transition to a climate-neutral economy is not inclusive by default. Support for those the most vulnerable is needed. BusinessEurope believes that while it is fair to support the most vulnerable groups, the temporary character of the support should be maintained. The Social Climate Fund allocations should not turn into a permanent component of passive income support. It should not become another permanent benefit not related to work but should rather finance expenditures on energy and transport and be investment-oriented. Moreover, while



the temporary modality of the support lessens financial burden linked to increased carbon prices, it is important to leave room for the necessary investments, for example in renovating buildings, replacing carbon-based heating systems with a more environmentally friendly solution or replacing traditional cars with low- or zero emission vehicles. It is important to note that the low-income households may need support to undertake necessary investments in energy efficiency and zero- and low-emission mobility and transport to be ready for the moment when temporary income support is no longer available.

- Furthermore, the range of beneficiaries should be increased to include not only micro-enterprises, but also SMEs, who today are the largest providers of mobility throughout Europe, especially for the vulnerable groups. SMEs are the backbone of the European economy and will need access to the fund to remain competitive. At the same time, they might not be eligible or have the administrative capacities to benefit from other support programmes such as the ETS Innovation Fund.
- The measure contains quite extensive reporting and auditing obligations under Art. 20. It must be ensured that those will be executed at a high and aggregate level to avoid new burden on consumers, enterprises and mobility users.
- It is not clear whether the earmarked allocation for the Social Climate Fund is sufficient to compensate for the long-term consequences for the ETS extension top buildings and road transport sectors. The Social Climate Fund also should address the issue of how the revenues collected from ETS at the national level would be included in the calculation of the available funding.

INVOLVING SOCIAL PARTNERS

The European Commission has consulted the idea of possible emissions trading for building and road transport with different stakeholders, including social partners. The consultations also included social consequences of this proposal. Social partners have been sceptical about the extension of emissions trading to the two sectors. A separate self-standing system for the building and road transport sector was the preferred option.

- Member states will design and select the measures and investment options while drafting their national Social Climate Plans. It is very important that social partners from all relevant levels (national, sectoral and company level) contribute to drafting these plans. Social partners are the best placed to co-design appropriate measures as they understand specific situations of individual sectors and regions. Social partners' contribution may also be valuable in case the plans were to be amended during their implementation.

Since the fund is to be complementary to already existing financial instruments focussing on the investments and skills in relation to transition, the role of social partners is even more important to co-created training opportunities. The role of training funds co-designed and/or (co-)managed by social partners is especially important in this respect. Social partners involvement is also desired given that opportunities for revenues and jobs creation would benefit local companies, often small and medium-sized enterprises. Social partners can ensure that these opportunities bring sustainable employment in tune with employers' needs.

- The architecture of the fund and the way it is implemented should build on experience gathered in the implementation of other Union funding as well as follow the main principles of the Recovery and Resilience Facility (RRF). The experience shows that when social partners



are involved in design and/or implementation of measures related to widely understood employment and skills, such initiatives are more effective. In particular, involvement of social partners can help ensure that the spending set out under the Social Climate Plans is truly additional (Art. 12) and prevent the fund from being used to fill holes in national budgets. Social partners have been expected to be involved in a meaningful and timely way in drafting the national recovery and resilience plans. It has not been the case: over 70% of BusinessEurope members complain that the involvement was not sufficient or hardly existent. This situation should not be repeated while drafting the national Social Climate Plans. In December 2021 the Commission intended to present a proposal for a Council Recommendation on how to address the social aspects of the desired green transition. BusinessEurope is ready to contribute with their specific knowledge and experience to making this document relevant for businesses and workers alike.



5. Carbon Border Adjustment Mechanism

KEY MESSAGES

1. As European companies do their utmost to upgrade their production process to become ever more efficient and sustainable, strong carbon leakage measures are key. A Carbon Border Adjustment Mechanism (CBAM) could be tested as a tool to fight carbon leakage and level the playing field. The measure should aim to equalise CO₂ emission costs between European and non-European producers and encourage producers from third countries to use more GHG emissions-efficient technologies. While the Commission's CBAM proposal goes in this direction, the European Commission should keep monitoring the risk of carbon leakage in the EU and engage early on with trade partners.
2. Ensuring WTO compatibility and avoiding retaliation from trading partners is key not only for CBAM sectors but also for the EU industry as a whole, including downstream sectors. The EU should continue its efforts to advance the EU climate diplomacy, urging third countries to step up their ambition in climate action, increase their Nationally Determined Contributions (NDCs) alongside the EU and implement carbon pricing systems. The long-term aim should be a global price on carbon or a climate club, which would reduce the need for measures such as a unilateral CBAM by the EU alone.
3. Free allocation of ETS allowances for the sectors covered should not be reduced (below the benchmarks) until the CBAM has proven its ability to effectively prevent carbon leakage. Any phase-out of free allowances should not start at least until 2030. After that date, decisions about starting the phase-out and its speed should be conditional on regular, thorough assessments. If free allocations were to be reduced after 2030, fully WTO-compliant measures to support exports by CBAM sectors should be considered. One such measure could be maintaining full free allocation for that part of the production which is destined for export.
4. Given the expected challenges of implementing the CBAM, several measures to facilitate implementation should be developed. These include supporting national customs authorities, establishing a monitoring system and an oversight body, as well as more robust measures to address resource shuffling and circumvention. Transparent participation by all stakeholders must be ensured during the process of drafting secondary legislation.

ENSURING WTO COMPATIBILITY AND AVOIDING RETALIATION FROM TRADING PARTNERS

Maintaining WTO compliance

Ensuring WTO compatibility is of fundamental importance to the pertinence and effect of the CBAM. The proposal covers the major concerns when it comes to WTO compatibility. The measure has an overall objective of environment protection in line with the GATT Article XX exception. The non-discrimination principles of the WTO have also been addressed e.g. only territories connected to the



EU ETS are exempted (Art. 2.3; Annex II, Section A) and the proposal keeps the cost of CBAM for importers equivalent to the cost of carbon pricing under the EU ETS. When including additional countries to this list (e.g. under the procedures in Art. 2.5 and 2.7), WTO principles, including most-favoured-nation treatment, and non-discrimination should be taken into consideration. Similarly, there is a risk of undermining the coherence of the measure through possible decisions by the European Commission to define dedicated default values for particular areas, regions or countries (Art. 7.6).

- It is of utmost importance that the European Commission continues to ensure the WTO compatibility of the measure in line with the GATT Article XX exception and the WTO principles of non-discrimination.

Managing relations with trade partners and avoiding retaliation

Applying a CBAM unilaterally risks increasing frictions with trade partners. Therefore, it is crucial to make use of the phasing-in period to leverage the CBAM into carbon pricing action by third countries. This will minimise trade retaliation risks and diminish the impact of the CBAM on Europe's export competitiveness.

Even if WTO compatibility is ensured, WTO members might still decide to take unilateral action and retaliate outside the WTO, especially given the current deadlock faced by the WTO Appellate Body. One of the main concerns of EU industry is that trading partners retaliate against European goods, whether those are produced by sectors covered by the CBAM or not.

- It is crucial that the EU continues its advocacy efforts towards trading partners, advancing the EU climate diplomacy and urging third countries to increase their ambitions and their efforts alongside the EU. Convincing others to follow and implement a carbon pricing system remains equally important. Beyond the UNFCCC process, forums like the G20, G7, the WTO and the OECD are key in this regard. This should also include capacity building actions and possibly financial support.

Working towards a global carbon pricing as a long-term ambition

While the EU is going ahead with the CBAM unilaterally, a much more effective solution to the problem of carbon leakage would be to establish a global carbon price or create a climate club. While we recognise this is a long-term goal not spared from obstacles, the CBAM could encourage other important global players to increase their climate ambition and realise that a global solution to the problem is a more efficient and fair option.

- In the long term, the European Commission should continue to work towards global carbon pricing at least at the G20 level, and form a climate club, which would be a much more effective solution to the problem of carbon leakage.
- The CBAM test period should serve as an opportunity for the EU to coordinate with its major trading partners and like-minded countries on the main features governing carbon border adjustment mechanisms. This discussion should ideally take place at the WTO and the UNFCCC, in an open and transparent manner. The objective is to harmonise the methods of emission calculation and verification among the countries which are considering and/or putting such mechanisms in place.



Recognition of carbon prices paid in third countries

The recognition of third-country carbon pricing systems is important for the measure to be WTO-compatible. On the other hand, this could also entail the risk that certain forms of compensation, e.g. through tax rebates, are not assessed when recognising carbon pricing systems. The current proposal only points to forms of compensation which are given at the point of export and specifically to exports only (Art. 9.2).

- The recognition of carbon costs borne in the country of origin is important for the fairness and WTO compatibility of the CBAM.
- However, compensations linked to carbon pricing schemes should also be taken into account to ensure a truly level playing field.

ENSURING EFFECTIVE CARBON LEAKAGE PROTECTION

Design options

With the choice for the notional ETS instrument (Recital 21), the cost of carbon pricing is extended to importers in a fair manner, especially with the weekly coupling of spot prices to CBAM charges (Art. 21) and the opportunity to collect the CBAM allowances throughout the year (Art. 6.1). This system has advantages over the other alternatives such as flat rate carbon tariffs and carbon excise taxes, both in terms of encouraging better environmental performance, as well as minimising the risk for retaliation from trading partners

- The basic design of the notional ETS extension should be maintained by the co-legislators. The system, which will be based on a declarative regime involving accredited verifiers, will have to consider the costs and administrative burden impacting EU downstream industries.

Coordination with free allocation of allowances under the ETS

Similarly to the ETS directive, the CBAM in this regulation is still classified as a measure that will become an alternative (i.e. replacement) for the established carbon leakage measures such as free allocation (Recital 11, Art. 1.3).

In BusinessEurope's assessment, the effectiveness of the CBAM and potential carbon leakage should be carefully monitored and assessed before any decision is taken on reducing the free allocation of allowances. Because the replacement of free allocation by the CBAM carries the risk of absorption and resource shifting by importers, the European Commission (after a transition period until 2030) should, at regular intervals, update its assessment of the carbon and investment leakage risks. This should be provisioned by introducing a clear review clause.

Furthermore, the position of EU producers on third markets must be evaluated as soon as the measure enters into force. Both the CBAM and downstream sectors that use CBAM materials in their production in the EU should be included in this assessment. CBAM sectors will be particularly exposed, especially when they stop receiving free allocation. They will undertake efforts to become more sustainable and reduce their emissions, while at the same time competing on foreign markets with producers that may not face the same pressures. In case carbon leakage is found to persist or increase, or if European producers lose market share abroad due to higher carbon costs, there must be the possibility to delay or suspend a further reduction in free allocation.



As products produced in the EU are less carbon-intensive than the global average, global emissions would actually rise if the CBAM, as an unintended consequence, results in an increase in carbon leakage. This would not only threaten the position of EU producers on third markets, but could also undermine the EU's industrial base, which is crucial to the development of innovative low-carbon products. Therefore, as a matter of environmental integrity, it is paramount that these consequences are excluded if free allocation is reduced.

- In our view, free allocation for the sectors covered by the CBAM should remain during a transition period lasting at least until 2030, to allow European companies to adjust and focus on low carbon investments. The European Commission should assess the effectiveness of the measure in preventing carbon leakage from the moment that measure is put in place and evaluate the position of EU producers on third markets. After 2030, this assessment should be the basis for decisions on whether to start phasing out free allowances for the sectors covered, and at what speed. These decisions should ensure that carbon costs under the ETS are equivalent to carbon costs borne by importers under the CBAM.
- If free allocations were to be reduced after 2030, fully WTO-compliant measures to support exports by CBAM sectors should be considered. One such measure could be the maintenance of full free allocation for that part of the production which is destined for export.

We consider positive that the proposal does not interfere with indirect cost compensation, which is and will remain an essential mechanism to maintain the competitiveness of the EU industry.

The calculation of embedded emissions (Annex III)

By only focussing on direct emissions the proposal becomes easier to apply in practice, but similarly does not include some of the factors that make importers artificially competitive (energy prices that do not contain carbon pricing). However, the correct pricing of indirect emissions of third-country installations is technically difficult at this point. Furthermore, due to the dynamics under the current structure of the EU power market (fossil power plants setting electricity prices as marginal installations) the indirect cost of emissions will remain at a higher level in the EU than for other regions in the medium term.

- Whether to include indirect emissions should be looked at again when a methodology of measuring embedded emissions is more developed and the EU power sector has comprehensively decarbonised. Both issues will not be achieved for several years after starting the collection of revenues in 2026. Therefore, the issue of including indirect emissions should be considered against the experience made with application of the CBAM (on direct emissions) up until that point.
- In our view, the default values assumed in the calculation of embedded emissions for imported goods will be of critical importance, as many importers will struggle to prove the individual emissions of their installations (Annex III, Point 4). In this regard, a lot will depend on how the Commission will calculate the "average emission intensity" for each of the goods produced in third countries, as well as the "markup" the Commission will apply. If these assumptions are imprecise, the risk of circumvention might increase. As mentioned below, these questions should be decided under the full transparency of the ordinary legislative procedure, not in comitology. In any event, Business Europe firmly believes that default values should strongly incentivise the use of "verified emissions" by importers. In addition, the Commission should build on the ongoing standardisation work on emission calculations at international level in order not to duplicate methodologies applicable to EU importers.



- For electricity, the technology used to calculate the embedded emissions can be the marginal one of the third country, if better information is not available. This is important to achieve a correct implementation of the CBAM mechanism.
- In addition, it should be ensured that the engagement of third-party verifiers to establish actual embedded CO₂ emissions can be done practically and cost-efficiently and is subject to an as low as possible administrative burden.

Sectors covered

With the choice of the sectors steel and iron, aluminium, fertilisers, electricity, and cement in a first step, the proposal ostensibly offers a good balance between environmental efficiency and ease of implementation.

- The CBAM will have a knock-on effect on the wider economy beyond the sectors directly covered – especially on the issues of potential retaliation and price effects down the value chain. On these topics particularly, law-makers should take concerns of all industries into account. This is especially true for the question of expanding the scope of the CBAM to more products down the value chain. One scenario that must be avoided is the increase of carbon leakage for manufacturing activities due to increased (carbon) costs for basic materials and inputs.
- As the measure is intended to limit the risk of carbon leakage in the mentioned sectors, the legislators should take into consideration the views of the sectors themselves regarding the question of whether or not the CBAM in its current form is up to the task. These concerns should be at the forefront of the discussion, especially because the proposal obliges the Commission to report on the measure before 2026, with the view to possibly extend the scope to a broader set of goods (Recital 28, Recital 52, Art. 30). Additionally, the mechanism should only be applied to sectors where it is feasible to have a full import traceability.
- Furthermore, the case of complex products that contain materials covered by the CBAM is not addressed as such in the Commission's draft. The testing period should provide insights on this point, which should be carefully evaluated given the prospect of a potential extension of the scope of the CBAM.

ENSURING AN EFFICIENT IMPLEMENTATION

Customs issues

The CBAM will have a significant impact on EU customs administration and procedures, which will have to be clarified, including with regard to inward processing. Customs authorities in EU member states will have the responsibility of implementing the CBAM at the border and their workload will increase.

- The European Commission should support national customs authorities during the transition period to ensure a smooth process and avoid heterogeneous implementations of the regulation across the EU.



- The impact on cash flows for recently established companies, especially SMEs, should be considered as well as ensuring flexibilities regarding changes in the data of the application for an authorisation (Article 5).
- Sanctions regimes: EU member states will apply administrative or criminal sanctions for failure to comply with the CBAM legislation in accordance with their national rules. Importing companies will therefore be exposed to different sanctions regimes and treated differently according to the member states from which they operate. The EU should opt for a single regime of sanctions, preferably administrative.

Monitoring

Given the untested nature of the CBAM and the expected complication with its implementation, a strict monitoring system and a body that would oversee the different aspects of the measure should be put in place.

- We recommend establishing an EU-level body (e.g. CBAM Authority) in charge of monitoring and supporting the implementation of the new mechanism. Furthermore, its mandate should be defined as to ensure a CO₂ cost equivalence between EU and non-EU suppliers. This would also be important to ensure coherent implementation among member states.

Powers delegated to the European Commission in secondary legislation

The proposal provides the Commission the power to decide by delegated or implementing act on significant matters (e.g. expanding the list of exempted countries (Art. 2.5, 2.7), recognising third-country systems for carbon pricing (Art. 2.12, Art. 9.4) default values, “mark-up” and process boundaries (Art. 7.6)). This makes the measure less transparent and accountable as it removes significant political oversight.

- While the examination procedure (Art. 29.2) provides for greater participation by member state experts, we nevertheless consider that these decision-making processes should also be transparent for all other stakeholders (e.g. to mitigate the risk of litigation and possible trade disputes). All stakeholders should be able to contribute to this process in a meaningful way. In order to leave enough time for adjustment, a precise timetable for the adoption of the secondary legislation should be set out.

In general, decisions of such importance should preferably be part of the primary legislation, subject to the ordinary legislative procedures.

Very narrow options to counteract circumvention (Art. 27)

The only measure against circumvention envisaged in the proposal is the delegation of powers to the European Commission that would allow it to add products to the list in Annex I, which are only slight modifications from the original products. This approach however overlooks many other ways of potential circumvention, such as the redirection of imports along the value chain, transshipment strategies and resource shuffling - that is the phenomenon whereby exporting countries would use their cleanest industrial plants to export to the EU, whilst keeping their more polluting installations for domestic or third markets.

- Legislators should complete the toolkit to counter these strategies as well. EU legislators should consider a system which addresses resource shuffling by monitoring the overall



emissions of trading partners. Furthermore, enforcement measures for circumvention cases should be envisaged, including the option of withdrawing the import authorisation.

Introductory period from 2023 to 2025, review in 2026 and beyond

The transition period from 2023 to 2025, during which there are only reporting obligations, but no CBAM charge is incurred by the importer, is in principle a good development, allowing all parties involved to build up the necessary administrative capacities and reporting practices. Companies and authorities should use this time to fully understand the reporting obligations and to assess the CO₂ and cost effects of the measure on the supply chain. However, this phase should not be the basis for a substantial review of the measure (e.g. on the scope of products), as the effects of the actual pricing will not be known.

- Instead, the review by 2026 (Art. 30) should focus on optimising administrative procedures, while the main features of the measure should remain stable at least until 2030. The changes should aim at optimising the costs of reporting obligations and verification procedures. BusinessEurope proposes to keep free allocation until 2030, when a thorough assessment should be undertaken, including on the quality of the collected data.
- Mid and long-term planning is key for companies. Sufficient lead times and predictability about the future scope of the CBAM as well as the specific effects of price increases in the selected CBAM sectors, as well as downstream effects, will be important for the competitiveness of EU industry.
- Further extension of the scope of the CBAM after 2030 should only be considered after a thorough impact assessment for all the candidate sectors and by utilising each sector's expertise to the development of an unambiguous, verifiable, simple and effective methodology for the embedded carbon calculation.

Use of revenues

As the European Commission has repeatedly asserted that the CBAM is an environmental measure not motivated by the need to raise revenue for the EU budget, it would be well advised to earmark the revenue collected and not let it become just an own resource in the EU general budget.

- The legislation should dedicate CBAM revenues to support decarbonisation and the deployment of low-carbon technologies in the European industry, e.g. via the ETS Innovation Fund. This should be done in a WTO-compatible manner.



6. Energy Taxation Directive

KEY MESSAGES

1. We support a revision of the Energy Taxation Directive (ETD). The current directive has been in place since 2003 and is outdated. Companies need an updated and clear EU energy taxation framework which reflects the reality of today's energy mix in order to have full legal and tax certainty when investing in climate-friendly alternatives. At the same time, the ETD revision should take into account overall EU competitiveness and all (energy) costs businesses are already facing to reach the goals of the 'Fit for 55' package.
2. We believe that the Commission's proposal to replace the current volume-based taxation structure in the ETD with a system based on energy content is a positive step forward to intensify investment in and the uptake of greener and more energy-efficient alternatives.
3. We are strongly concerned about measures proposed in the ETD which will particularly harm the competitiveness of energy-intensive industries. Less favourable treatment for these sectors will make it less attractive for them to invest, including in the energy transition. We strongly object to the removal of the option to differentiate minimum tax rates based on consumer (between business use and non-business use) and on consumption levels.

As part of the 'Fit for 55' package, a common EU framework on the taxation of energy products is necessary for the smooth functioning of the EU energy market, to take account of the new energy mix, strengthen EU business competitiveness and deliver on the EU's climate ambitions. The Energy Tax Directive (ETD) plays a key role in the overall 'Fit for 55' package: companies need a stable competitive policy environment with both legal and tax certainty to be able to make long-term investment decisions. In this context, the revision of the ETD is particularly relevant for the deeper development of and greater investment in climate-friendly technologies, and should also be seen in light of the revisions of e.g. the Emission Trading Scheme (ETS), the Renewable Energy Directive (RED) and the Energy Efficiency Directive (EED).

ENERGY CONTENT-BASED SYSTEM AND ENVIRONMENTAL RANKING

We support the European Commission's proposal to replace the current volume-based taxation structure (mainly expressed as EUR/litre) in the ETD with a system based on energy content (expressed as EUR/gigajoule) as it will play a helpful role in the reduction of greenhouse gas emissions. By leaving pure volume-based taxation behind, the Commission is taking a decisive and positive step to intensify investment in and uptake of more climate-friendly alternatives, particularly sustainable biofuels and biogas.



The 'Fit for 55' package requires overall coordination and it is important the relationships between the different instruments, their separate objectives, and their impacts on the overall costs are fully understood. This is essential when discussing the ETD concept of an "environmental ranking". Having a focus on only energy content would provide a direct incentive towards energy efficiency whereas adding a ranking would provide a focus on carbon reduction and our common primary goal of reaching carbon neutrality in 2050. This raises key questions about the ETD's overall coherence with other 'Fit for 55' policy instruments. This demands consideration first if we want to ensure in full that the revised ETD improves business competitiveness and supports the Green Deal overall:

- **EED:** Under the proposed system in the ETD, the same amount of energy will be taxed differently depending on the source. This is not coherent with the current approach of the energy efficiency regulation that advocates a cap on energy consumption independent of the origin of the energy. For example, under the proposed ETD rates, it is possible that the same amount of energy is taxed 72 times lower from an energy product or electricity with no or less CO₂ content.
- **ETS:** The environmental ranking of energy carriers is (partly) based on CO₂ emissions (even if the link is not explicit⁶). Since ETS (existing and new) actors are also subject to a CO₂ price, this is a double charge. Considering the overall increase of the cost burden on energy, we would urge EU member states to consider the overall (direct and indirect) impact of the 'Fit for 55' package on costs for ETS actors.
- **RED:** Access to fiscally competitive low-carbon energy is an essential condition for the decarbonisation of business sectors and to achieve the goals of the Renewable Energy Directive in particular. Some of the proposed minimum rates on low & zero-carbon energy products however seem more adapted to ensure additional tax revenue, rather than having a greater steering effect in terms of greenhouse gas reductions, whilst large volumes of low-carbon fuels and renewable hydrogen are expected to be required to realise large scale decarbonisation.

10-YEAR TRANSITION AND YEARLY INDEXATION

Apart from a mandatory indexation for all minimum rates on energy products, some will also see a consistent one-tenth increase in the minimum rates as laid down in Annex I of the ETD every year during their transition period (2023-2033). This seems a reasonable timeframe to us and a predetermined one-tenth increase provides businesses with a level of certainty about future costs in those EU member states where the national tax rates would be identical to the ETD minimum rates. However, the evaluation report mentioned in Article 31 should include the option for a possible prolongation of the transition period should regulatory, technical and/or market changes occur during the decade which would justify a revision of the timeframe.

We are however concerned that the yearly indexation of minimum rates with core inflation numbers may not provide sufficient stability to businesses nor certainty about their medium-term investment plans (as opposed to the yearly predetermined one-tenth transition period increases). We therefore do encourage to consider somewhat longer indexation intervals, at least in the first half of the transition period.

⁶ Page 30 of the impact assessment accompanying the document on the Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity



We recognise the ambition of the envisioned implementation date of the proposal (2023). After a unanimous agreement in Council, work should immediately start on the transposition into national law and the publication of the delegated acts (e.g. with the customs nomenclature) before real implementation is possible. Sufficient time should be available for businesses who will have to undertake certain logistical changes (contracts, invoicing, systems and settings, accounting, etc.). It will be essential to indicate the corresponding customs codes in Tables A/B/C/D of Annex I (as it is currently the case in Directive 2003/96), in order to determine precisely the applicable minimum levels of taxation for each energy product (and not by category of products).

LIST OF ENERGY PRODUCTS AND APPLICABLE DEFINITIONS

The proposal updates a number of provisions in the current directive, which had been unclear ever since implementation of the ETD in 2003, or which have become unclear due to technological developments and the EU's evolving energy mix. Such clarifications may seem minor and technical, but we want to underline that these are essential for businesses. The current wording of the ETD allowed for far too many different national interpretations throughout the EU, and thus unexpected and costly legal disputes between businesses and tax authorities and subsequent ECJ cases. The revised ETD, with updated clarifications, will ensure EU-wide interpretation as much as possible and thus deliver tax certainty for companies, which is an important factor for any climate-friendly investment decision a company will make.

Considerable improvements are:

- The ETD currently in force does not provide definitions on e.g. second and third-generation biofuels, alternative fuels, e-fuels, synthetic fuels, bio-methane, etc. These provisions are now clarified in Article 2, paragraph 4-5, in line with other EU regulations.
- The ETD currently in force lacks clarity as to under which conditions electricity produced from combined heat & power generation (CHP)/ "co-generation" could be tax exempt. In the revised ETD, we welcome the clarification that CHP could be tax exempt if the electricity produced from CHP is in line with the EU Directive on energy efficiency, Article 2, Paragraph 34. Nevertheless, we regret the optional nature of such a measure and, as explained in our chapter on state aid, should transform into a mandatory exemption.
- The revision also helpfully clarifies which product uses are out of scope of the ETD, such as the dual use of energy products or the output taxation of heat (Article 3).
- The proposal also improves the 'disorderly' structure of the current ETD and removes e.g. the myriad of tax exemptions which were no longer available, regardless of a revision (Annex II).

However, the directive should further clarify:

- The concept of hydrocarbons (Article 2(3), par.3).
- The link between Article 2 (definition of energy products), Article 21 (list of products subject to control) and the annexed tables with the minimum rates.
- The treatment of various types of hydrogen (hydrogen from different origins, different types of production, etc).



- In Article 2.7, there is a reference to a new obligation which states that suppliers should be “reasonably aware” of how the recipient will use the products (as heating fuel, as motor fuel, etc.). Further clarity is needed on the concept of “reasonably aware”, and how this situation is intended to work with intermediaries.
- For those energy products that remain exempt for 10 years in the aviation and maritime sector, how will their final indexed rate be decided? Will a new delegated act be necessary in 2033?
- In addition, it is not always clear how the input energy for generating these new products is taxed. The European Commission has confirmed at various times that the energy tax should be seen as a consumption tax. Including a general provision that confirms this principle would allow EU member states to ensure clarity in local rules with respect to the input energy for generating new energy products as innovation in these production processes will be an equally important driver for decarbonisation.

In addition, we are concerned about the references made to taxonomy throughout the proposal. The EU taxonomy regulation is not yet completely defined and any proliferation of this tool into the area of the ETD must be evaluated cautiously.

When implementing the ETD, member states should make sure that there’s a common agreement on the conversion of energy content minimum rates back to a volume unity. Energy content of an energy product cannot be measured at the point of delivery, but volume can. If no fixed conversion rates of energy content-based minimum rates per volume unit are available, the minimum rates will not offer a uniform standard across the EU member states but will be interpreted differently in implementation, undermining the internal market.

IMPACTS ON (ENERGY-INTENSIVE) BUSINESSES

It is essential that the ETD continues to protect European competitiveness. While legal double taxation is avoided, by not having a strict CO₂ component in the tax base of the ETD, the element of the “environmental ranking” does imply a certain “double charge”. It should be worth remembering that businesses could not only see a yearly indexation and one-tenth yearly increase of minimum rates at the entry into force of the ETD revision, but also a range of other measures: a reduction of exemptions in the ETD revision, an increase in transport fuel prices due to the expansion of the EU ETS, an increase on heat and electricity prices within the current ETS, an increase in electricity prices for CBAM purposes, and local carbon price levies already in place in many European countries, etc.

Aside from more sector-specific concerns regarding the aviation sector and mineralogical processes (see below), we find that in general some of the rate increases proposed in the ETD – by leaving behind volume-based taxation - are particularly strong and their effects may be underestimated. In those member states where the tax rate of natural gas is close or equal to the current minimum in the ETD (€0,15/GJ), the proposed increase to €0.6/GJ may jeopardise the competitiveness of energy-intensive industries. Such a rate increase (and including for other gas products such as LNG) seems to run particularly counter to the goals of the DAFI Directive (2014/94/EU on the development of alternative fuels infrastructure), where gaseous fuels are identified as alternative fuels on which the transport sector’s energy transition process should be based.



The tax rate increases on some energy carriers can also not be alleviated by the Commission's proposal to remove the current distinction between business and non-business use for heating fuels and electricity, and commercial and non-commercial use of gas oil and natural gas as motor fuel. In order to uphold the competitiveness for businesses (and not just those of the energy-intensive industries) and avoid carbon leakage, it is essential that this option for a distinction remains, in particular for electricity. Such policy also allows EU member states to design the best possible approach for their own country, taking the relative trade intensity of specific sectors into account or the situation of lower-income households.

We strongly object to the removal of the option to allow differentiated rates according to quantitative consumption levels (for electricity and energy products used for heating purposes - Article 5 in the current ETD legislation). To further incentivise the move towards new energy carriers in businesses' daily industrial processes, EU rules should allow for some dedicated quantitative consumption levels. The removal of differentiated rates based on quantitative consumption levels will needlessly raise the tax burden on particularly energy-intensive industries. We regret that the removal of this provision is also not explicitly accounted for in the impact assessment.

THE ETD AND OPTIONAL/MANDATORY EXEMPTIONS

We are disappointed to see a general move towards more optional tax exemptions rather than mandatory tax exemptions in the ETD. Optional tax exemptions are often subject to long and complex state aid rulings, usually carrying a great deal of uncertainty for companies. At a time when businesses are investing considerably to green their production processes, absolute certainty about the tax treatment of such changes should come swiftly, leaving no doubt about the future tax cost of such investments.

Therefore, the ETD should provide for full, clear and unequivocal exemptions for more processes, in particular those which can contribute to the continued decarbonisation of our economy, such as electricity and other energy products to produce electricity (Article 13), and the cogeneration/combined heat and power generation in Art. 16c7. Another exemption that should be made mandatory, in analogy to the exemption used for sustainable fuels in the aviation sector (Article 15), is for alternative sustainable and low-carbon fuels and gas in Article 16d, which could provide an important price signal for the decarbonisation and uptake of electromobility, hydrogen and e-fuels in the road transport sector.

Further coordination should be envisioned between the ETD and the draft state aid guidelines. For example, there seems to be an inconsistency concerning the minimum tax rate of electricity: the ETD proposal wants to keep the minimum rate for electricity at EUR 0.15 per GJ which equals EUR 0.55 per MWh. However, according to the draft state aid guidelines (see paragraph 4.7.1.3.3), the European Commission will consider the aid to be proportionate "[...] if aid beneficiaries pay at least 20% of the national environmental tax or parafiscal levy; [...]". For some energy-intensive firms in countries with significantly high electricity taxes, this would be a real disadvantage⁸: In 2017, electricity used in large industry was on average already taxed at EUR 28 per MWh in the EU.

⁷ Such exemption should also take the results of ECJ Case C-31/17 into account.

⁸ For example, if the national tax rate for electricity is €28 per MWh, the state aid proposal would only allow the tax rate to be reduced to a floor of €5.6 per MWh, which is 10 times higher than the proposed minimum tax rate of €0.55 in the ETD.



In any case, we support further alignment of the state aid regulations, especially the block exemptions, to ensure that local application of unanimously agreed options for reductions and adjustments need no further vetting when implemented in member states.

MINERALOGICAL PROCESSES

The ETD has always recognised the potential implications of this directive for the overall competitiveness of the EU (recital 8), and we welcome the Council's continued recognition that the assessment should consider in particular those sectors most exposed to international competition⁹. In this light, we do not support the Commission's proposal to include mineralogical processes within the scope of the revised ETD. These industrial processes mainly cover the glass, ceramics, cement, plaster, and lime industry. The production process needs high temperatures to produce these products, which requires a high energy input to reach the necessary energy transfer for the mineralogical transformation. In many cases, the needed energy has not only heating purposes for achieving the reaction temperatures but, additionally, the purpose of providing the needed enthalpy for the chemical reactions. Accordingly, the steering effect of an energy taxation would be severely limited. Moreover, the production of these products will always include carbon emissions due to the raw material involved in their production, regardless of the energy product used.

These industries are particularly energy-intensive, and their energy costs can reach up to 20% of total production costs¹⁰. The glass, ceramics, cement and lime industry are covered by the ETS, where they are already encouraged to invest in more decarbonised production processes. An inclusion into the ETD will result in a higher tax burden for this sector and withdraw capital from a sector that is currently investing in lower-carbon technologies. Given the strategic importance of these sectors, we support the continued exclusion of mineralogical processes from the scope of the ETD.

Furthermore, it is essential that comparable processes are treated on an equal footing. The ETD proposal seems to drop the exemption for the production of rock wool, whilst continuing the exemption of glass wool, a very similar product.

AVIATION AND WATERBORNE NAVIGATION

We believe that CO₂ reductions in the aviation and maritime sector can be better achieved through market-based measures, which are already applied to aviation through the EU Emissions Trading System (ETS), and globally through CORSIA and the IMO MARPOL Annex VI convention for maritime. An increase in the tax burden for these sectors, in particular when not considering a global level playing field would substantially reduce the investment capacity of these hard-to-abate sectors into new decarbonisation technologies, including cleaner fleet and alternative sustainable fuels, as well as risk shifting traffic flows away from EU hubs leading to loss of connectivity and competitiveness. Such concerns are particularly acute in light of the COVID-19 pandemic and its impact on these sectors and the tourism sector.

In this context, we want to highlight as well that different initiatives are taken in other parts of the 'Fit for 55' package to reduce the emissions in these sectors (e.g. extension of the ETS to maritime). In

⁹ <https://www.consilium.europa.eu/en/press/press-releases/2019/12/05/energy-taxation-council-calls-for-an-updated-framework-contributing-to-a-climate-neutral-eu/>

¹⁰ https://ec.europa.eu/energy/sites/ener/files/epc_report_final_1.pdf



particular, initiatives such as RefuelEU Aviation and FuelEU Maritime, which are destined to ramp up the production, deployment, and supply of affordable, high-quality alternative sustainable fuels in Europe, which can emit up to 85% less CO₂ than regular fuels¹¹, will prove essential in decarbonising the sectors.

If member states would decide to proceed at EU level with taxes on aviation and waterborne navigation - which we do not support - the revenue raised should at least be earmarked directly to concrete and measurable projects and measures that effectively contribute to decarbonising the sectors that are being taxed. As a minimum, special focus needs to be paid to island countries whose geographical position will increase the relative burden of such a tax far more compared to other countries. In addition, countries which depend heavily on maritime and aviation transport for their islands or overseas regions or because of other geographical attributes need to be taken into consideration too.

With regards to the aviation sector, if member states would decide to proceed at EU level with a tax, the 10-year transition period on regular aviation fuels should be an absolute minimum. The zero rate for sustainable aviation fuels (SAFs) as proposed in the ETD Article 14 is certainly helpful but the current volume of SAFs available is very limited, and what is available is at the moment often considerably more expensive than regular kerosene. Other future fuel technologies, such as power-to-liquid (PtL) fuels, are expected to be even more expensive, also because of higher feedstock and production costs. The supply of these fuels to remote and outermost regions of the EU may result in even bigger challenges and may ultimately translate to higher costs for air operators within these regions. If the EU would go forward with a tax, the tax exemption for alternative and sustainable fuels must stay in place until these fuels are more commonplace and affordable.

For sea transport, we strongly support the transition period for green fuels, as this is helpful and essential to limit competitiveness risks. In addition, we very much welcome the possibility of a full or partial tax exemption for shore-side electricity supply to ships in ports.

REVENUE

According to the European Commission, the ETD's aim "is not to increase revenues from the tax (...) one of the objectives [is] to preserve the revenues raising potential for Member States (according to their policy choices in the area of taxation)", implying the reform should be above all as close to revenue-neutral as possible. We agree that the potential ETD revenue should not be seen as an overall goal in itself. While there is certainly some (albeit limited¹²) room to change the overall tax revenue mix, the primary goal of the ETD revision should be to contribute to the functioning of the internal market and the EU's wider climate goals. The proposal itself however seems at times focused on generating additional fiscal revenues, rather than choosing a greater steering effect in terms of energy efficiency or greenhouse gas reductions.

In this respect, we would like to underline that – in terms of general tax policy, outside of the ETD - a

¹¹ Page 13 of the impact assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council on ensuring a level playing field for sustainable air transport.

¹² Energy tax revenue (this includes revenue related to the ETD, but also other national levies) accounted for only 4.6% (+/- €257 billion) of the EU's overall tax revenue in 2019, with two thirds coming from transport fuel taxes. At Member State level, energy taxes range from 3.5% to 9% of total national tax revenue (Source: Taxation Trends in the European Union – European Commission).



higher overall tax burden as a result of the revised ETD should be offset with lower taxes in other areas. As the impact assessment notes, the European Commission's proposal on the ETD may (very slightly) reduce EU GDP and EU employment, due to the higher overall tax burden, with different impacts in different member states and sectors. However, according to the Commission's own model, these effects can be mitigated or even overcome by recycling the additional revenue raised under the ETD "into subsidies on the purchase of clean capital and capital tax reduction". Lowering capital taxes, which the Commission calls "the most distortive"¹³ type of tax, would be the most efficient way according to the analysis for offsetting the negative impact of the ETD on both GDP and investment. Also lowering personal income taxes can mitigate the regressivity of the proposed changes.

¹³ Page 61 of the impact assessment accompanying the document on the Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity



7. Renewable Energy Directive

KEY MESSAGES

1. Renewable and low-carbon energy is already playing an important role in reducing the carbon footprint of the European economy, and further integration of both renewable and low-carbon energy will be crucial to achieve our ambitious emission reduction targets. For this to happen it will be of utmost importance to focus on the enabling tools and concrete pathways to deliver on the objectives, while also removing the remaining barriers to renewable energy sources (RES) deployment.
2. This includes the need for a stable and consistent governance framework, as well as the necessary flexibility regarding specific targets and incentives for the renewable-based electrification of end-use sectors. Beyond that, a stronger consideration of how to ensure the availability of renewable energy at competitive cost, as well as the infrastructure needs linked with increasing RES integration are key for success. In particular, it is pivotal to define fast-track processes and to remove permitting bottlenecks at all levels, aiming at (i) significantly decreasing permit issuance times, (ii) providing certainty of authorisation/administrative times and (iii) fostering efficiency of authorisation processes.
3. Strengthening of cross-border cooperation and the facilitation of Power Purchase Agreements (PPAs), also for larger companies, are very positive. These initiatives should be accompanied by rapid completion of Important Projects of Common European Interest (IPCEI) and market mechanisms providing long term locational price signals, which are necessary to promote capital-intensive investments in RES, storage and grids, as well as the establishment of an EU-wide guarantees of origin (GOs) certification system. This system should expand on the existing GO scheme by covering all renewable and low-carbon forms of energy, while clearly indicating the CO₂ content of the energy in question.

TARGET GOVERNANCE (ART. 3)

Abundant, reliable and cheap renewable energy is key for the European industry to stay competitive. Renewable and low-carbon energy is already playing an important role in reducing the carbon footprint of the European economy, and further integration of both renewable and low-carbon energy will be crucial in order to achieve our ambitious emission reduction targets.

Beyond the headline RES target, BusinessEurope considers that this review of the Renewable Energy Directive must focus on the “how”, and specifically:

- Introducing the tools and enabling conditions in all sectors that will facilitate an increased availability of renewable and low-carbon energy and cost-competitive prices.
- Identifying and eliminating the remaining barriers that are still hindering European companies in their attempts to engage in RES sourcing and provide the necessary financial support mechanisms and funding programmes.



- Embracing the principle of sector integration and harmonising RES policies with other regulatory instruments with regard to the ETS, Energy Performance of Buildings Directive (EPBD), effort sharing, energy taxation, state aid, hydrogen, transport and gas.

Below, BusinessEurope outlines the provisions that need to be introduced to the RED in order to facilitate a greater level of RES penetration in our energy system in a cost-efficient way, thereby helping us ensuring compliance with the headline RES target and the broader climate goals.

MAINSTREAMING RENEWABLE ENERGY IN INDUSTRY (ART. 22A)

Targets for RES consumption in industry: In line with the above, the targets introduced on industry should remain indicative. Many of the possibilities for industrial RES sourcing are based on technologies that, albeit highly promising, are not yet available on the market (for example, renewable hydrogen). It is therefore premature to establish binding targets, given the significant uncertainty that still exists regarding the future availability of the necessary products and technologies. In this context and with regard to the overarching goal of decarbonisation overly prescriptive consumption targets could be counterproductive. Therefore, a certain flexibility and technological neutrality is key to ensure effective and efficient emissions reductions.

Furthermore, these targets are likely to lead to differing burdens on different EU member states, depending on the level of industry in each country (especially with regard to the need for public funding, which will be necessary to support investments in industrial decarbonisation). Due consideration of this issue is necessary, and further support at the EU level should be provided where suitable.

Aside from the targets themselves, a stronger focus on the availability of renewable energy at competitive prices, and in particular on the relevant infrastructure needs, are key to success. Between now and 2030, it is important to maintain an open dialogue between the industry, policy makers, and other relevant stakeholders, in order to track progress towards the indicative RES targets and discuss measures that could be introduced in order to stimulate the further uptake of industrial RES sourcing.

Furthermore, as buildings represent more than 38% of Europe's emissions, and more than 75% of their energy consumption is based on fossil fuels, the renewable-based electrification of both heating and buildings should be further incentivised (i.e. including renewable electricity in the accounting of heating and cooling target).

Bioenergy is the largest RES in the EU and important for decarbonising the industry, as well as other sectors like aviation and shipping. Investors need reliable access to sustainable feedstock including waste and residues. Untimely and comprehensive revisions of rules and criteria for forest-based bioenergy creates uncertainty in the governance framework and can reduce the access to renewable energy from sustainable and cost-competitive bioenergy systems.

Green industrial claims on the use of renewable energy: There are initiatives that are already in place or being reviewed (green claims, eco-design, etc.) to address the environmental performance of products. It is therefore questionable whether the RED is an appropriate instrument to tackle these claims, when doing so risks leading to double regulation and unnecessary additional regulatory burdens.



CERTIFICATION AND VERIFICATION SYSTEMS (ART. 19)

An EU-wide guarantees of origin (GOs) certification system should be established. This system should expand on the existing GO scheme by covering all renewable and low-carbon forms of energy, while clearly indicating the CO₂ content of the energy in question. The use of GOs should also be recognised for accounting purposes of CO₂ reduction in industrial processes, in a way that is consistent with the EU ETS Monitoring and Reporting Regulation. Given the horizontal and cross-cutting nature of GOs, consistency with other initiatives such as the CBAM and Green Bonds should also be taken into account.

Additionality is important on the system level in order to avoid the simple transfer of already existing renewable energy from one sector to another, without contributing to increasing the overall renewable energy penetration. However, the rules governing hydrogen production in the RED are highly technical, and sometimes unrealistic, seeking to reconcile the provision of support to produce hydrogen from facilities like wind and solar power. These challenges arise, among others, from the limitations on additionality and PPAs. Although ensuring additionality is undoubtedly crucial, a necessary degree of flexibility must ensure that these provisions do not stifle the development of hydrogen, and that they ensure GHG emission reduction. While some EU countries have low penetration of renewable electricity it is the opposite in others. Not being able to produce hydrogen from renewables already in place discriminates market movers and significantly delays a pan-European hydrogen market as well as its cost efficiency.

NATIONAL FRAMEWORKS ENABLING THE DEPLOYMENT OF RENEWABLES IN THE POWER SECTOR AND PPAs (ART. 3, 4 AND 15)

Support schemes for renewables should be designed so as not to distort wholesale markets. EU energy legislation should fully support market mechanisms providing long-term price signals, which are necessary to promote capital intensive investments not only in RES, but also in assets - such as storage systems - that are essential for managing the system safely and reducing the risks of RES over generation and which would not be made if investors had to rely only on spot market price signals. RES support schemes should be improved with additional price signals aimed at targeting the geographical development of RES – including offshore – consistently with the local grid potentialities, so as to optimise transmission and distribution grid management and developments.

The possibility for member states to introduce schemes that support RES power purchase agreements (PPAs) is a highly positive and necessary development. The regulatory framework for PPAs is not sufficiently developed yet and the market can lack transparency for some companies. Financial energy markets and multi-technology sourcing should be further developed in order to mitigate some of the risks associated with PPAs. The possibility of state-backed guarantees can play an important role in reducing barriers for SMEs and helping them to sign RES PPAs. However, the barriers that larger companies are still facing in signing RES PPAs should also be identified and removed. For example, support should also be considered for the additional costs that electro-intensive consumers face when consuming renewable electricity (firming/shaping costs). Clearer rules for permitting contracts should also be established (for developers), while easing the current rules for auctioning interconnection capacity to promote physical PPAs, and removing barriers to renewable energy storage.

Furthermore, guarantees are one of the main barriers for the development of PPAs, the costs of which are particularly accentuated due to the time extension typical of PPAs and the potential range of price



evolution and thus the “value” of the contracts over a long-term horizon. An effective solution consists in the introduction of a centralised clearing management mechanism, in the hands of a neutral central counterparty which would be entrusted with the tasks of: (i) responding directly to the fulfillment of each operator; (ii) managing the guarantees system; (iii) overseeing the correct implementation of payment and delivery procedures.

Finally, the rules on RES PPAs should not discriminate against other options for producing low-carbon electricity, especially in cases where the alternatives are most cost-effective.

CROSS-BORDER COOPERATION (ART. 9): OBLIGATION TO HAVE PILOT PROJECT WITHIN 3 YEARS AND OFFSHORE COOPERATION BY 2050

The provisions on cross-border cooperation are positive and could be further strengthened by considering to include other low-carbon options. The intention of Article 9 and Article 10 is to increase cross-border cooperation and public tender across member states. Furthermore, the existing barriers to cross-border RES sourcing should also be identified and removed (for example, the lack of long-term capacity allocation products at interconnectors).

It is imperative to the idea of an Energy Union that cross-border infrastructure for electricity and energy do not face regulatory barriers, get easily financed and are rapidly built, applying a cost-benefit analysis to comply with the ‘energy efficiency first’ principle defined in the Energy Efficiency Directive. The current energy crunch is a powerful reminder of how important it is that energy production cannot be seen in isolation from the broader energy system.

PERMITTING RULES (ART. 15, 16, 17)

Achievement of the new 2030 ambition set out in the directive proposal will require a crucial acceleration of the administrative procedures that still hinder the development of green energy projects, resulting in a higher risk for delays and additional development costs. Permitting remains one of the main bottlenecks for the uptake of renewable energy projects in the European Union, as well as the large-scale development of energy infrastructure needed to transport renewable energy from decentralised locations. National administrations have met an increased influx of project requests which seem to have overwhelmed the system in place. Likewise, delays can occur due to lengthy legal proceedings. Measures to minimise these issues, such as one-stop-shop, including streamlined procedures based on maximum durations of procedural steps, need to be effectively enforced.

Faster permitting procedures should facilitate even more repowering and revamping projects. The revised directive could raise its ambition on this point, as the existing plants can make the difference in achieving the 40% RES target while limiting the new soil consumption. The unprecedented efforts in planning, authorisation and development of RES and grid investments required by the green transition must rely on an adequate legislative framework at the EU level which should support the instruments implemented pursuant to the Recovery and Resilience Plan at national level. BusinessEurope believes that the definition of a minimum set of clear and general rules would speed up the transposition process and ease the ex-post monitoring of national measures by the European Commission.



The simplification and shortening of the permitting process and the streamlining of public acceptance initiatives is key not only for RES, but also for the related grid infrastructure projects. The grids will fundamentally enable the transition by integrating a significant increase in renewable energy in the European energy system and by putting the ‘energy efficiency first’ principle into practice. The legislative framework for RES deployment should therefore keep a holistic view, considering the overall system needs. For grid investments, which are essential for the green transition, the European Commission should integrate the RED III and other linked initiatives with obligations for EU member states to provide fast-track procedures. Besides shortening maximum timings for those processes, it is necessary to provide measures that guarantee the effective respect of these envisaged timings (e.g., silent consent provision, promotion of the dialogue between the different parties involved in the authorisation process). Permitting processes must be aligned with the EU decarbonization targets both in terms of issuance times and capacity expectations. A simplification of the authorisation process would also be appropriate for the construction and operation of electrolysers and all the related infrastructures, making the process as clear as possible depending on the different configurations. Specifically, it will be appropriate to take account of, on the one hand, the average reference sizes of electrolysers (according to the current and prospective technology development) and, on the other hand, the different possible configurations.



8. Energy Efficiency Directive

KEY MESSAGES

1. An energy-efficient economy is key to reaching the ambitious EU climate targets, while ensuring growth and prosperity in Europe. This can only be achieved via a comprehensive and systemic approach that provides flexibility and allows us to reap unexploited energy savings and decarbonisation potential across the economy.
2. A simple cap on energy consumption risks hampering industrial output, while also limiting the potential for decarbonisation and leading directly to carbon leakage. Furthermore, the new baseline must not constitute a penalising element for those member states that so far have invested heavily in energy efficiency policies. A stronger focus on energy intensity treating energy efficiency as a useful indicator to achieve the main goal of decarbonisation is key to maximising efficiency in an economical and efficient way that also effectively contributes to the climate transition.
3. The stronger exemplary role of the public sector is positive and can boost the transition to a low-carbon economy by exploiting untapped decarbonisation potential in the buildings sector. Thus, it will be important that the Energy Performance and Building Directive (EPBD) revision is coherent with the ambition set in the Energy Efficiency Directive (EED) proposal.

SYSTEM EFFICIENCY

An energy-efficient economy is key to reaching the ambitious EU climate targets, while ensuring growth and prosperity in Europe. This can only be achieved via a comprehensive and systemic approach that allows us to reap unexploited potential for energy savings across the entire economy, while decarbonising the energy consumed. Thus, the concept of “system efficiency” should be seen as a guiding principle for the revision of the EED.

This means considering not only the energy efficiency of specific technologies or installations, but also the potential system-level efficiency gains that can be reaped via the smart combination of energy supply and demand. This includes, but is not limited to, the deployment of new technologies, innovation, smart and flexible grids, and active demand-side flexibility of end-users, such as industrial players. We refer to our [position paper](#) on the EU Smart Sector Integration Strategy, which outlines BusinessEurope’s views on how to integrate our energy systems in the most efficient and effective manner.

Energy systems consisting of increasingly large volumes of RES will create completely new preconditions and challenges for both the system itself and the concept of efficiency at large. It will increase the need for sufficiently flexible technologies that will, eventually over time, enable us to overcome the temporal discrepancies between demand and supply, in order to ensure that instead of having to curtail RES units during hours of high renewable production, the green energy can instead be stored and then consumed efficiently. While this is our ambition, regulation must acknowledge



that the transition phase goes with different speeds in different sectors and avoid picking winners or solutions that create energy transition barriers to others.

CAP ON ENERGY CONSUMPTION (ART. 4, 29)

The new European target of reducing energy consumption by at least 9% in 2030 compared to the 2020 baseline reference scenario seems to be in line with the broader GHG reduction target of 55%. However, the new baseline must not constitute a penalising element for those member states that so far have invested heavily in energy efficiency policies.

In the meantime, setting a simple cap on energy consumption risks limiting the potential for industrial decarbonisation. Decarbonising our economy will require investments in a multitude of products and technologies (RES units, low-carbon fuels, grids, electromobility, storage, carbon capture utilization and storage (CCUS) etc.). Innovative technologies for decarbonisation can be very energy-intensive. To maximize the positive climate impact, we need to ensure that all these products and technologies are produced with the lowest possible carbon footprint, which usually means producing them in Europe. A cap on energy consumption risks limiting the potential for such production in Europe, leading directly to carbon leakage. We do not consider that the objectives of the Green Deal run contrary to the concept of industrial growth; instead, we would like to see Europe becoming a significant exporter of climate-friendly products and technologies (thereby also leading to emission reductions in third countries).

Moreover, Art. 29 on the use of conversion factors must be reviewed as it discriminates renewable electricity and makes a cap on energy use even more counterproductive with regard to the energy transition.

BusinessEurope believes that the energy efficiency target should take future needs into account while also considering the potential trade-offs between decarbonisation and energy consumption. Ideally, the EU's energy efficiency target should be reformulated around the concept of 'energy intensity', namely the energy consumption per unit of economic output. There has been a 26.8% drop in energy intensity in the European industrial sector during the period 2000-2017.

In view of the arguments presented above, and as agreed upon by policy-makers during the recent negotiations on the recast of the Energy Efficiency Directive and Governance Regulation, the EU energy efficiency target for 2030 should remain indicative. This is crucial, as the main purpose of increased energy efficiency must remain a means to the end of decarbonisation. Hence, the EU's energy efficiency target for 2030 should be regarded as an extremely useful and defined indicator, not a strictly-to-reach target in itself. Therefore, flexibilities for member states to define their planned contributions as part of the Governance Regulation should be maintained.

'ENERGY EFFICIENCY FIRST' PRINCIPLE (ART. 3, 25)

BusinessEurope acknowledges the European Commission's proposal to enshrine the 'energy efficiency first' principle into the EED. As noted above, energy efficiency is a key enabler of decarbonisation, and the potential for efficiency gains across the entire energy system must be exploited.

However, it sometimes runs contrary to climate objectives; hence, it will be important to fix the scope of action and application for this principle. Energy efficiency, and in particular the remaining potential for cost-effective energy savings, should be considered in these decisions, particularly when these



decisions apply to energy-intensive/hard-to-abate sectors and extending infrastructure and deployment. Clarity is also required in relation to if and how the concept of system efficiency will be integrated into these decisions.

Moreover, energy efficiency often gets confused with energy savings. These are very different subjects, in particular when considering energy as an input factor in efficient industrial production versus in households to maximise welfare. It is imperative to manage to separate the two concepts, in particular during the decarbonisation phase.

Although it seems reasonable that EU member states should ensure that gas and electricity transmission and distribution network operators also apply the 'energy efficiency first' principle in their activities, the related provisions for member states to ensure that distribution system operators (DSOs) and transmission system operators (TSOs) do not invest in stranded assets in order to contribute to climate change mitigation do not seem well specified and detailed. In particular, while only security of supply and market integration concerns seem to be considered relevant in the evaluation of stranded assets, investments to make the grid future-proof and enable an evolutive use of the infrastructure (such as renewable gases and hydrogen injection, transport and distribution) and the uptake of innovative technology (such as using the gas grid in order to send power-to-gas or power-to-hydrogen outputs along an integrated and coupled energy system) should be considered too. For these reasons, the practical implementation of the 'energy efficiency first' principle requires the deployment of a correct governance, including an efficient cost-benefit analysis methodology and a framework of independent monitoring and assessment.

ENERGY SAVINGS OBLIGATION (ART. 8)

As a major point of concern, the Commission's proposal includes an increase of the annual energy savings obligation to be applied on EU member states between 2024 and 2030, from 0.8% to 1.5%. At the same time, the flexibility options provided to member states in order to comply with this obligation were severely limited, making it even more challenging to ensure compliance.

Article 8 should focus not only on end-user efficiency, but also on supply-side efficiency. A truly efficient energy system requires energy efficiency across the entire value chain. To support system efficiency, member states should be allowed to count towards the amount of required energy savings, time-dependent and dynamic savings (including shifting) obtained during peak time through the activation of demand-side flexibility in reaction to external signals, both at end-use and supply levels.

It is crucial to ensure that the obligations introduced by this Article are both technically and economically feasible. Otherwise, there is a risk that the obligations will lead to consequences that are unintended and undesirable, such as potential market distortions due to a mix of obligations and alternative measures implemented by member states. As mentioned above, decarbonisation of the European industry can, in many cases, require an increase in energy consumption. This means that a large annual energy savings obligation based on energy consumption risks limiting the potential for industrial decarbonisation, while also introducing unrealistic energy savings requirements on industry and hindering the potential for growth. It would also entail a greater burden for operators of those member states that have already adopted obligation mechanisms. Instead, an obligation built around the concept of energy intensity could be more suitable in terms of ensuring the desired results (of energy efficiency, decarbonisation). Industrial decarbonisation will require a redesigning of energy-intensive industrial processes. This could conflict with the energy saving obligation. There is a need for



clarification to avoid multiple economical burdens for industrial companies acting in this field of tension by defining suitable measures.

To encourage member states to invest their resources only in “future-proof, sustainable technologies”, the proposed revision of the Energy Efficiency Directive provides that energy savings resulting from measures involving the direct use of fossil fuels will no longer be viewed as eligible energy savings. We consider this projection unsuitable because it could lead to the exclusion of energy efficiency interventions that involve the use of efficient technologies, such as cogeneration. Reducing decarbonisation incentives for member states that currently rely on fossil fuels would make it significantly harder for the EU to meet its 2030 targets and could significantly prolong the lifetime of existing carbon-intensive assets where alternatives are not cost-effective.

While we consider tackling energy poverty as important, it is questionable whether the EED is the right policy tool to tackle this issue. It could generate complexity and less flexibility for those member states which have adopted energy efficiency obligation schemes based on certificates.

ENERGY AUDITS AND ENERGY MANAGEMENT SYSTEMS OBLIGATIONS (ART. 11)

The flexibility introduced by Article 11 in terms of applying an energy management system (EMS) or performing energy audits is welcome. We note that industrial consumers always have an inherent economic incentive to improve their energy efficiency, given that lower energy consumption also tends to entail lower costs. Mandatory obligations linked to the audits should continue to be avoided, in particular for SMEs, as this would pre-condition companies’ investment plans. EMSs have proven to be a cost-effective alternative to the audits.

To support the deployment of energy management systems and the implementation of recommendations from energy audits, financial incentives should be set up as part of member states’ obligation to implement Article 11. The companies implementing the audit recommendations with the highest decarbonisation impact (combining energy efficiency measures, renewable energy deployment and energy conservation measures) should be awarded with the highest level of incentives.

STRONGER EXEMPLARY ROLE OF PUBLIC SECTORS (ART. 6 AND 7)

To maximise the level of energy efficiency across the entire economy, joint efforts of the private and public sectors are key. Thus, the proposed stronger exemplary role of the public sector and public buildings is positive and can be a boost for the EU economy if well implemented. However, flexibility should be guaranteed in order to take into account the specific characteristic of the national building heritage of the public sector, which in several cases is made up of historical buildings, as well as the lifecycle of public buildings. It will be important that the upcoming revision of the Energy Performance of Buildings Directive (EPBD) is coherent with the level of ambition set in the EED proposal. The obligation to reflect energy efficiency in all high-value public procurements should not affect sectoral contracting authorities.



HEATING AND COOLING SUPPLY (ART. 24)

With regard to legal certainty, we consider it necessary to maintain the current definition of an efficient district heating and cooling system at least until the end of 2025. Also, changes in the definition of efficient district heating/cooling over time must not have a retroactive effect, which would be very problematic for operational aid granted or in the case of financing. Changes of definition should not apply to systems already in operation, but only to new or significantly refurbished systems. The definition should not explicitly specify the share of energy from renewable sources.

METHODOLOGY FOR DETERMINING THE EFFICIENCY OF THE COGENERATION PROCESS (ANNEX III)

The introduction of a further criterion for achieving high-efficiency cogeneration (270g CO₂/kWh) is problematic and incorrect from a technical point of view as it places the value of electric and thermal kWh on the same level. The approach should therefore be to make that value congruous with a combined production of electricity and heat (not only of heat as the proposal seems to be thought). A reasonable value could be 350g CO₂/kWh, even though the thermoelectric performance would be already much improved.



9. CO₂ emissions standards for cars and vans

KEY MESSAGES

1. BusinessEurope acknowledges the Commission’s proposal to achieve the climate protection targets in transport by adjusting the CO₂ standards for cars and vans and formulate their contribution to decarbonisation. Nevertheless, the proposal should be improved in some key aspects. To realise the increase in ambition, much more ambitious infrastructure provisions under the Alternative Fuel Infrastructure Regulation (AFIR) proposal will be needed and bindingly agreed, for example. Furthermore, more ambitious fleet targets can only be achieved in a holistic, technology-neutral approach that includes the adoption of the European Commission's optimised overall package on the European Green Deal, especially with regard to the Energy Taxation Directive and RED III amongst others.
2. The 100%-reduction, tailpipe-only target for 2035 is exclusionary and not in line with the principle of technological neutrality; it does not take into consideration development of key enabling conditions such as recharging and refuelling infrastructure and disincentivises investment into crucial technologies such as liquid low-carbon and renewable fuels. The regulation should recognise the valuable contribution these fuels can make towards decarbonising the transport sector as a whole and consider the option of well-to-wheel (WtW) CO₂ emissions accounting in the medium term. Generally, the usefulness of defining targets as far into the future as 2035 is doubtful.

REDUCTION TARGETS FOR 2030 AND 2035 (ART. 1.5, 1.5A)

Reduction compared to the 2021 target	Cars (previous legislation)	Vans (previous legislation)
2030	-55% (-37.5%)	-50% (-31%)
2035	-100%	-100%

The values above represent a steep increase in fleet targets for 2030, and an entirely new dimension for 2035. This challenge is deeply connected to the Alternative Fuel Infrastructure proposal – ambition there will have to be increased significantly if the 2030 targets is indeed to be reached. The current proposal does not make it feasible for enough consumers to switch to alternative fuels as not enough publicly accessible infrastructure would be in place by then. It is clear from the outset that even for the 2030 targets, more charging points will be necessary, as the European Commission pointed out in its own estimate in 2018. Furthermore, at the moment the AFIR proposal at the moment lacks clear enforcement mechanisms, which risks uneven implementation across different member states and regions. Overall, more ambitious fleet targets can only be achieved in a holistic, technology-neutral approach that includes the adoption of the European Commission's optimised over-all package on the European Green Deal, especially regarding the ETD, RED III and AFIR.



Furthermore, with increased demand, it is of crucial importance to avoid supply shortages in battery technology which must be addressed urgently. Overall, the legislation's intention should not be to only disincentivise/prohibit the use of conventional fuels but more so to make electrification and alternative fuels financially more attractive, and to encourage switching. Long-term goals can be a part of that incentive structure but should remain open and not become absolute.

Despite the best efforts of the EU and member states, the switch to electric mobility, together with the sustainable production of batteries and vehicles will not be instantaneous and represents a big challenge in terms of investment and developing the industrial value chain. This is especially true for some specific market segments and light commercial vehicles.

- If the 2030 target is to be reached, more ambitious AFIR targets are needed, as well as better enforcement mechanisms (see AFIR position).
- To meet the climate targets in an effective manner, it is necessary to look at the CO₂ standards in conjunction with the forthcoming legislation on Euro 7/VII emission limits. Its requirements should be complementary to climate action and should not further complicate technology and investment planning by companies. In this respect, social aspects should also be taken into account.
- For these goals to be reached, the availability of batteries and raw materials at affordable prices is key. The EU should swiftly move forward on concluding negotiations on the battery regulation, and get the work of the European Raw Materials Alliance (ERMA) kick-started.
- Additional investments by the EU and members states are needed to make the switch affordable for all. Member states e.g. should consider redirecting significant amounts of the auctioning revenue from the potential ETS extension to investments in the alternative fuel network.

While the Commission has been focussing on electrification for some time now, the new regulation should not directly ban any technology. However, the 2035 target of 100% reduction (compared to the 2021 goal) represents a de-facto decision against technological neutrality by the Commission at a time when so many parameters for technological and political developments are yet unknown. By keeping to the tank-to-wheel emissions (TtW) approach exclusively, the Commission is failing to account the full environmental footprint of different powertrain technologies. Without the option to instead consider well-to-tank emissions (WtT) (with respective WtT and TtW responsibilities) for energy/fuels; and neglecting renewable and low-carbon liquid fuels as a complement to electrification, this approach distorts the competition both between powertrain technologies and between energy vectors. It also discounts the potential for biofuels, which are a readily available means to reduce the emission impact of transport.

Generally, the usefulness of defining targets as far into the future as 2035 is doubtful. If a target is defined, legislators should prioritise an approach that recognises the contribution renewable and low-carbon liquid fuels can make in the mobility transition. Without such an approach, the proposal disincentivises investment into the further development of liquid fuels, which would have beneficial spill-over effects for other sectors such as maritime transport and aviation, too. It would also undermine the coherence of the package, as other measures (e.g. RED III, ReFuel EU and FuelEU) do acknowledge the usefulness of renewable and low-carbon liquid fuels.



- At this point, with many parameters of the mobility transition still unknown, it might not be useful to define detailed targets for 2035. A strong review clause in 2028, identifying the need to fix post-2030 targets, by taking into account the monitoring of a reliable and comprehensive expansion of the charging infrastructure in all member states, could be an option that still provides investment certainty for the industry, while allowing further technological development in the meantime.
- Any post-2030 target designed today must be kept open for all technologies, as all pathways towards climate neutrality in road transport will be needed. The targets should therefore allow for the use of renewable and low carbon liquid fuels. Legislators should furthermore consider the switch to an overall well-to-wheel consideration in the medium term.
- Finally, BusinessEurope recommends considering the social and industrial impacts of the proposal, including the impacts of any revised target on employment along the entire automotive value chain. Particular attention should be placed also on small volume manufacturers (SVMs) by keeping the current derogation and exemption scheme unchanged.

INCENTIVE SCHEME FOR ZERO AND LOW-EMISSION VEHICLES IN 2030 (ART. 1.6)

The current proposal would end the incentive scheme. The end of the incentive scheme removes another flexibility option for producers, which had contributed to a greater uptake of zero to low-emission vehicles in the last few years. By not continuing the mechanism the European Commission is giving manufacturers little opportunity to adapt.

- The incentive scheme for zero and low emission vehicles should be maintained.



10. Alternative Fuels Infrastructure Regulation

KEY MESSAGES

1. The extension targets for alternative fuel infrastructure should be more ambitious to enable the emissions reduction included in other 'Fit for 55' regulatory proposals, in particular the regulation on CO₂ performance standards for cars and vans and the FuelEU Maritime initiative. The expansion of hydrogen infrastructure at airports needs to be included to utilise its potential for furthering climate neutrality in aviation.
2. In the road transport sector, the targets for all fuels covered by this proposal (electricity, hydrogen, CNG, LNG) should be set on the basis of similar principles (maximum distance along the TEN-T networks, minimum output, based on fleet size).
3. The proposal should be complemented by clearer enforcement provisions, lining out the Commission's options in case it finds any member state's policies insufficient for reaching the targets, and at what point an infringement procedure would be initiated. Implementation of the proposed provisions should also be quicker in order to facilitate the transition to low and zero emission mobility. To enable this change, the EU and member states should provide co-financing and incentive schemes to providers and operators of infrastructure points.

CHANGE FROM A DIRECTIVE TO A REGULATION (ART. 1)

With the change from a directive to a regulation the proposal aims to go for a more uniform and swifter implementation of binding targets, compared to the previous fragmented expansion in infrastructure under the directive. While this aim is positive, the system needs to provide enough flexibility to account for specific national and local circumstances.

- While the introduction of uniform targets (fleet- and distance-based, see below) in a regulation that applies directly throughout the EU can certainly contribute to a more even growth in the network, the regulation should leave sufficient flexibility via the national policy frameworks (NPFs) for specific circumstances borne out of the members states' geographic, economic and legal conditions (e.g. with regards to highway concessions). In order to overcome barriers to the deployment of charging infrastructure, member states need sufficient flexibility and European co-financing for appropriate support programmes. These programmes must ensure that a comprehensive EU-wide network of charging infrastructure is built as quickly as possible, including a balance between fast and normal charging as well as charging solutions for private charging infrastructure.
- The current definition of alternative fuels should be maintained. The new categorisation under Art. 2.3 does not take into account the potential offered by the gradual decarbonisation of gas networks.



GRID EXPANSION TARGETS FOR PUBLICLY ACCESSIBLE ELECTRIC CHARGING POINTS FOR CARS AND VANS (ART. 3)

The new regulation provides for expansion targets that set minimum standards both in relation to the member states' road network (both TEN-T core and comprehensive network, Art. 3.1) and their respective fleets of registered battery electric vehicles (BEVs) and plug-in hybrid electric vehicles (PHEVs). With these targets the proposal is taking a helpful approach, as it orientates the requirements for infrastructure proportionally to the future BEV/PHEV penetration in the markets. At the same time, it also sets a minimum floor for area coverage of electric charging points along the TEN-T core and comprehensive network to ensure the operability of BEVs/PHEVs across the Union. On the other hand, still the proposal is reacting 'after the fact' to the registrations made and does not provide incentives to stimulate ramp-up of BEVs/PHEVs in the EU proactively and stimulate the consumer demand.

However, the currently proposed targets are not sufficient for reaching the targets in emission reductions set by the CO₂ emission performance regulation. This target design, if faithfully implemented, would lead to a total of around 3.5 million publicly accessible recharging points by 2030, according to the impact assessment (p. 53). However, in an earlier [non-paper](#), the European Commission assumed that in order to facilitate a fleet emission reductions goal of 50% in 2030, at least around 4.3 million infrastructure points would be needed (p. 3)¹⁴. Given that the current proposal for the CO₂ performance standards entails a reduction of 55% by 2030, and 100% by 2035, the current targets for electric charging seem to fall short and should be increased.

- The targets should be increased in line with the earlier calculations to allow for the ramp up of electric vehicles needed to attain the CO₂ performance targets. Higher targets are required in particular with regard to the installed charging capacities per registered BEV and PHEV, as well as a shortening of the maximum distances between charging points, and an increase of the on-site power provision.
- Similarly, the targets for high-capacity charging pools for heavy-duty vehicles should be reassessed in light of a revision of the regulation on CO₂ performance of heavy-duty trucks.
- With regard to the provision of hydrogen refuelling infrastructure, the law-makers should consider to bring the planned targets forward to 2027 with regard to the TEN-T core network and to 2030 with regard to the TEN-T comprehensive network.
- It is also important to ensure sufficient infrastructure of fuelling and charging stations in time to enable cross-border transport.
- A higher ambition for recharging infrastructure should not disincentivise other technologies needed to drive emissions down.

BALANCE BETWEEN DIFFERENT ALTERNATIVE FUELS IN ROAD TRANSPORT (ART. 3, 4, 6, 8)

Because of their definition, the proposed targets put a heavy focus on electric charging points, both for light-duty vehicles (LDVs) and heavy-duty vehicles (HDVs). The proposed targets for hydrogen fuelling stations (Art. 6) do not refer to the fleet size and the ones for LNG are not explicitly defined

¹⁴ European Commission, *Non-paper on Cars/Vans CO₂ Regulation proposal: Additional assessment of higher ambition levels for the targets and ZLEV benchmarks*, November 2018.



(Art. 8, based on demand to be accessed by member states). As such, the technology approach in the proposal is somewhat biased and could impact the free market conditions towards the development of the most competitive lower-carbon solutions. Similar principles (proportionality to the fleet size, minimum power output, maximum distance between stations) should be applied to define the infrastructure targets for LDV and HDV electric charging (Art. 3 and 4), hydrogen (Art. 6) and LNG (Art. 8). In line with the principle of technological neutrality, refuelling and recharging infrastructure planning should be designed to promote vehicles using low or zero well-to-tank emissions fuels such as biofuels, hydrogen and synthetic fuels, along with - in the short and medium term - compressed and liquified natural gas, especially in hard-to-abate transport where direct electrification of transports is not possible.

- The targets for LDV or HDV electric recharging points, hydrogen refuelling, and LNG infrastructures should be similarly formulated (based on distance, fleet size and minimum output).

STANDARDISATION AND INTEROPERABILITY (ART. 5, 7, 18, 19, ANNEX II)

It is positive that the proposal keeps the emphasis on a standardised user-experience and on data exchange that allow for e-roaming, cross-border use and the use of mobility service providers on a contractual or ad-hoc basis. The requirements for enabling smart charging also add to the value of the electric vehicle fleet in terms of adding stability to the energy system overall. On the other hand, an overly prescriptive approach, with numerous technical and service requirements might hinder the attainment of ambitious roll-out targets. A lot will depend here on the delegated acts the European Commission is empowered to adopt under the proposal with regards to technical specifications (Art. 18-20).

- The provisions mentioned on standardisation should be maintained – however given the enormous challenge, the Commission in a delegated act on technical specifications should relax some of the requirements for isolated and rural areas, where the challenge is to build any alternative charging/re-fuelling infrastructure at all.
- Additionally, the proposal should include more detailed standards for hydrogen fuelling stations, similarly to what is provided for electric charging in Annex II. These specifications are important to boost the deployment of infrastructure.
- For the most efficient use of charging points and the creation of non-discriminatory access to them for all users, a roaming obligation (analogous to roaming obligations for mobile telephony: telephoning in all networks with all contracts) should be made binding. The necessary monitoring processes to enable follow-up measures should be installed as early as possible.

ALTERNATIVE FUEL INFRASTRUCTURE FOR AIR AND SEA PORTS (ART. 9, 10, 11, 12)

The revision of the alternative fuel infrastructure requirements in the maritime and waterways ports is a step in the right direction. Special attention must be paid so that the requirements remain coherent with the ones laid down in the FuelEU Maritime Regulation.



- The requirements for ports and waterways must remain consistent with any relevant changes to the FuelEU Maritime Regulation which might occur in the negotiation stages, in particular with regards to the obligation to mandatorily use shore-side energy while ships are at berth.
- The proposal should enable the use of mobile power supply units to meet the demands from container and passenger ships.
- The proposal should support new infrastructure for the storage and supply of the zero- and low-carbon fuels considered by the shipping companies to reduce their GHG emissions and supported by the proposed FuelEU Maritime Regulation.
- Setting the time frame for the expansion of infrastructure across TEN-T network in air and maritime transport is very tight and additional burden on the sectors will have to be avoided. A longer time frame for adaptation should be considered due to the time needed for conversions of fleets and the availability and allocability of renewable energy.
- The expansion of hydrogen infrastructure at airports is missing in the proposal. 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. This will pave the way for the availability of hydrogen for aircraft in the 2030+ timeframe.

NATIONAL POLICY FRAMEWORKS, PROGRESS REPORTS AND MONITORING BY THE EUROPEAN COMMISSION (ART. 13-16; ANNEX I, III)

With the revised format of the national policy frameworks (NPFs), a greater emphasis is put on the actual measures necessary to achieve the targets, including support under the state aid framework (Art. 13.6) and plans to encourage the roll-out of private charging points in addition to publicly accessible ones (Art. 13.1 (f)). However, with the final version of the NPFs only due in 2025, and the first progress reports in 2027, there is a risk that member states are not acutely aware of their obligations, when they already have to attain their first targets by 2025. In this regard, the continuous progress tracking by the European Commission might prove helpful (Art. 16.1). However, there is no clear recourse spelled out in the regulation for when the Commission finds the corrective actions proposed by lagging member states to be not satisfactory (Art. 16.2), which might endanger the follow-through of the ambitious targets spelled out in the proposal.

- The transparency with regards to enforcement actions should be increased, detailing what consequences member states would have to face in case their policy measures are deemed not satisfactory (Art. 16.2) and at which point the Commission would initiate legal action, e.g. by starting an infringement procedure.
- Member states should be able to hand in a preliminary NPF before 2025, so that their policies can be ramped up earlier, and the Commission can give some early advice and improvements.



11. ReFuelEU Aviation Regulation

KEY MESSAGES

1. The ReFuelEU Aviation Regulation gives a good impulse for the progressing decarbonisation of the aviation industry. The proposal, which contains a blending mandate, coupled with an uptake obligation, should also provide for sufficient flexibility in other areas, such as giving fuel suppliers the opportunity to fulfil the obligation as an average of all their fuel deliveries until the European market for sustainable aviation fuels (SAF) has matured.
2. The blending obligation also has to be flanked by supporting measures that ensure that the supply chain for SAF is developing in line with the demand. For this, additional funding is required both from the national and the European level to close the price gap between conventional fuels and SAF, for as long as it persists.
3. While the carbon leakage effect of this measure seems manageable when looked at in isolation, this picture might shift significantly when taking into account the other proposals that will affect aviation (ETS; energy taxation). The European Commission should conduct an assessment of the combined effect of these measures, and law-makers should change the proposals accordingly if needed to avoid market distortions in European aviation vis-à-vis international competitors.

Flying on SAFs, reducing overall CO₂ emissions by up to 85% compared with conventional A-1 jet fuel, is one of the main drivers to reduce emissions from aviation. Yet, SAF supply is currently still very scarce. This scarcity of current commercially available SAF results in such fuels being 3 to 6 times more expensive than regular kerosene. Other future SAF technologies, such as synthetic fuels, are not yet industrially mature, and are expected to be 8 to 10 times more expensive, due to higher production costs. BusinessEurope supports the Commission's proposal RefuelEU Aviation to scale up the production and uptake of SAF in Europe. At the same time, there are some elements where the proposal could be further improved, which are detailed below.

DEFINITION AND AVAILABILITY OF SUSTAINABLE AVIATION FUELS (SAF) (ART. 3)

The proposal defines both SAF as well as synthetic aviation fuels (renewable fuels of non-biological origin, RFNBO) in line with the definition and the sustainability criteria of the 2018 Renewable Energy Directive (REDII), as BusinessEurope called for in its March 2021 position paper on sustainable aviation and maritime transport.

- The proposal refers to the closed list of feedstocks in Annex IX of Directive (EU) 2018/2001, which in BusinessEurope's view should be expanded in the current round of reforms to increase the availability of SAF. In particular, it is important that feedstock used to produce SAF meets high sustainability criteria, as laid down by the Renewable Energy Directive (RED) which is currently being revised. SAF production must have a minimal impact on biodiversity, not compete with food production, be of high quality and lead to a minimum CO₂ reduction of 70%.



- The ReFuelEU framework on sustainable air transport should take advantage of that list if it is indeed extended and should stay dynamically aligned with the list.
- In any case, both the EU and the member states must come up with further support programmes for the production of SAF, at least as long as the price difference between SAF and conventional jet fuels remains substantial. One source of this funding should be the ETS Innovation Fund. 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. Progress towards price levelling of SAF could also be achieved by using these revenues for funding operating expenses (e.g. via carbon contracts for difference).
- These support schemes should have as a core condition that the SAF produced in Europe is primarily intended for the domestic European market, to avoid inefficient import and export due to differing support schemes.

SUPPLY OBLIGATION FOR SAF AT UNION AIRPORTS AND UPTAKE OBLIGATION FOR AIRCRAFT OPERATORS (ART. 4, 5, ANNEX I)

Under the proposal, aviation fuel suppliers, as regulated entities, defined in line with REDII (Art. 2.2), are obliged to ensure that aviation fuel supplied by them to each EU airport¹⁵ contains a certain amount of SAF, and as part of that a certain amount of RNFBO.¹⁶ The targets are increased gradually (according to Annex IV, see below) and are to be fulfilled on an annual basis. Shortfalls by any supplier are to be made up with volume-equivalent supplies of SAF the following year, in addition to administrative fines (Art. 11). Airline operators¹⁷ (airlines) are mandated to take up 90% of the yearly aviation fuel required (the amount of aviation fuel necessary to operate the totality of commercial air transport flights over the course of a reporting period) – this is meant to ensure that both EU carriers and non-EU carriers uplift fuel in Europe, which will contain gradually more SAF volumes.

The targets are specific to each airport, as is the uplift mandate – only for a transitional period from 2025 to 2029, aviation fuel suppliers can supply the minimum share of SAF (2%) as a weighted average of fuel supplied to all EU airports.

Year	Share of SAF (of total fuel)	Sub-mandate of RNFBO (of total)
2025*	2%*	-
2030	5%	0.7%
2035	20%	5%
2040	32%	8%
2045	38%	11%
2050	63%	28%

*: flexibility provision, during which fuel suppliers can average out their deliveries and between airports to reach the required quota.

¹⁵ With more than 1 million passengers per year.

¹⁶ EU airports with more than 1 million passengers or 100,000 tons in commercial cargo per year.

¹⁷ Operators with more than 729 commercial air transport flights out of EU airports per year.



- BusinessEurope sees the Commission proposal as relying too heavily on hefty spikes towards 2050. To smoothen out the growth curve, we suggest to have slightly higher obligations in the near and medium term to ensure regulatory certainty for plant expansion and the production and uptake of SAF, including RFNBOs.
- The specificity of the obligation (every delivery to every airport has to contain at least X amount of SAF) undermines the flexibility necessary for a widespread production increase for SAF. Sustainable fuels should be supplied as a matter of priority where their use is most efficient – e.g. in greater quantities near production centres and at big international hubs, where fuel infrastructure is further developed. Therefore, the flexibility provided for 2025-2029 should be extended until the SAF market has matured. This must be determined by each structural revision of the Regulation.
- While the flexibility provision is in place, a “book & claim” mechanism could also be introduced, flanked by a system of certificates, between fuel suppliers and airlines, which would be useful for overcoming the logistical/operational difficulties that could affect some airports.

BUILDING UP THE SAF SUPPLY CHAIN

BusinessEurope underlines that the development of SAF requires the introduction of measures to stimulate their research, industrialisation and use, enabling their economic sustainability in line with the fossil alternative. To realise the ambition of the climate plans, it is necessary to put in place the necessary flanking measures already mentioned by the Commission’s own impact assessment.

- Under the umbrella of the Renewable and Low-Carbon Fuel Value Chain Alliance, an aviation pillar should be set up as quickly as possible.
- Carbon contracts for difference and other crediting mechanisms should be used to support the production of alternative fuels, while a combination with measures such as SAF production tax credits should also be explored.
- The EU should also push for new SAF pathways to be recognised at ASTM (the responsible standardisation body), and measures to reduce the costs of the certification should be considered and proposed as quickly as possible in cooperation with the European Union Aviation Safety Agency (EASA).
- Considering the long payback periods and burdens for investment in SAF, a simple, clear, and stable regulatory framework is required in the long term. It will also be necessary to introduce support systems with economic incentives in the form of subsidies for research and industrialisation as well as funding and policies that close the remaining price gap as long as it persists.

CARBON LEAKAGE

The European Commission assumes that by 2040, the policy will lead to fuel costs rising by more than 20% when compared to the baseline, leading to a ticket price increase of over 5% for those airlines



that are covered by the obligations under this regulation (p. 49-51). While the competitive disadvantage from the SAF obligation seems to be limited, ReFuelEU is not the only proposal within the 'Fit for 55' package that addresses the aviation sector.

- The Commission should (swiftly) analyse the cumulative effect of the changes introduced to the EU aviation sector (ETS – loss of free allowances, a potential kerosene tax through the revised energy taxation directive, ReFuelEU).
- If the cumulative carbon leakage effect of the measures mentioned above is threatening to undermine the competitiveness of European carriers, law-makers should consider measures to level the playing field with non-EU carriers. BusinessEurope stands ready to work together to find appropriate solutions to retain the competitiveness of the European aviation sector, including compensation mechanisms, while at the same time reaching the EU's climate goals.

COHERENCE WITH ICAO (INTERNATIONAL CIVIL AVIATION ORGANISATION)

Article 14 refers to periodic reports that may consider if this Regulation should be amended and, options for amendments, where appropriate, in line with a potential policy framework on SAF at ICAO level.

- Business supports the efforts of the EU to promote the concept of the blending mandates at ICAO level as well as harmonised sustainability criteria. Given the global dimension of air transport, without such harmonisation there is a high risk of market distortion with serious damage for the competitiveness of the European airline industry.
- BusinessEurope supports expanding the scope of the reports to reflect all innovative fuel concepts emerging from ASTM certification that might provide environmental benefits, including lower-carbon aviation fuel (LCAF) and hydrogen. The reports should also take the development of new production capacities in Europe into account.



12. FuelEU Maritime Regulation

KEY MESSAGES

1. BusinessEurope supports the underlying ambition of tackling greenhouse gas emissions from the maritime shipping sector at the EU level (despite the fact that an international solution for shipping would be preferable). The well-to-wake emission intensity standard is the right tool in this context. However, the standard and the default values used, both for well-to-tank and tank-to-wake emissions should be more flexible in order to recognise alternative production pathways for fuels as well as increasingly efficient propulsion technologies.
2. With the current proposal, the European Commission goes beyond what is currently agreed at the multilateral level in the IMO (International Maritime Organisation) framework. This creates the risk of frictions with trading partners as well as a risk of carbon leakage, especially due to the partial application of the measure on out-going and incoming voyages. The European Commission should engage proactively with trading partners on these issues, and monitor closely any potential for carbon leakage, taking into account the combined effect of the measures affecting the maritime shipping industry (FuelEU, ETS, taxation). Overall, BusinessEurope calls on lawmakers to ensure the consistency of this measure with the rest of the ‘Fit for 55’ package, throughout the legislative negotiations.
3. BusinessEurope welcomes the measures aiming to provide flexibility when obtaining the FuelEU certificate of compliance (pooling of ships, “banking and borrowing” for compliance surpluses). However, these measures should be further complemented by removing the 10% penalty factor for “borrowing” and adding a mechanism that recognises high-quality emission offsets from outside the maritime shipping industry.

PRINCIPLE OF EMISSION-INTENSITY STANDARDS, WELL-TO-WAKE APPROACH (ART. 1, 2, 3, 4, ANNEX I-II)

With this regulation, the European Commission for the first time attempts to directly regulate the emission intensity of shipping obligations. It is positive that the Commission aims at a goal-based system, instead of prescriptive use of select alternative fuels (Policy Option 3 instead of 1) Furthermore, the proposal follows BusinessEurope’s previous position in opting for a long-term framework to reduce well-to-wake emissions as spelled out in Art. 4. (reference year 2020, based on existing data from the [MRV regulation on maritime emissions](#)).

Year	Reduction vs 2020 (grams of CO ₂ equivalent per MJ)
2025	-2%
2030	-6%
2035	-13%
2040	-26%
2045	-59%
2050	-75%



This framework, however, is not linked to the availability and price competitiveness of sustainable maritime fuels (SMF). We believe SMF will show different growth curves in different fuel types (e.g., biofuels, renewable ammonia and methanol, RFNBOs as well as LNG and bio-LNG in the medium term). Especially in the early portion of the adoption pathway, as production is still ramping up, it is crucial that unforeseen price hikes are avoided. This could be achieved by temporarily delaying the introduction of higher emission reduction targets, if price levels reach a reference price determined a-priori. To further lower the risk of supply squeeze and allow for more effective emission reduction, the methodology for calculating well-to-wake emissions (Annex I, II) should recognise technological developments that will make fuels less emission-intensive than the default values currently given in the proposal.

BusinessEurope recognises the contribution of LNG as an alternative fuel for the medium term and supports the affirmation of the principle of technological neutrality in the definition of the objectives of the regulation (Recital 10). It should be noted that the default emission values, contained in Annex II, place LNG almost on a par with the most polluting fossil fuels, undermining the attractiveness of investment in this technology.

- The well-to-wake emission intensity standard can be a positive instrument to reduce the shipping emissions in line with technology developments. The reduction targets should be subject to careful assessment.
- For well-to-tank emissions of fossil fuels the system should recognise production pathways that are less intensive than the ones assumed by the default values (e.g. when using CCS/CCU). These pathways should benefit from a crediting system that counts towards the compliance balance of the FuelEU certificate.
- The framework should also make the certification of well-to-tank industry-specific values feasible for fuels/pathways combinations presenting a carbon intensity lower than the default ones. Initiated upon request of the industry, the process should be based on documentation and verification provided by the fuel producers.
- The expansion of the infrastructure, especially with regard to onshore electricity supply in ports, must be ensured and eligible for funding, so that the electricity/energy supply is able to cover the demand in ports. For this the ETD draft and the AFIR draft are important flanking measures to guarantee that the obligations of the initiative can be met.

EXTERNAL SCOPE, LIABILITIES AND CARBON LEAKAGE (ART. 2 (c))

The proposal suggests to partially (50%) apply the emission intensity thresholds to outgoing and incoming voyages as well. However, significant challenges might arise with regards to the availability of verified renewable and low-carbon fuels (RLF) outside the EU (Art. 2 (c)). Furthermore, this approach might be perceived as extra-territorial enforcement by the EU's international partners. This could lead to similar problems as those witnessed with the original expansion of the EU ETS to international flights in 2012. In addition, while the impact assessment (p. 73 and Annex IV.7) addresses the risk of re-routing of goods being shipped to Europe to avoid the FuelEU obligation, it does not address the risk of carbon leakage in terms of European ports at risk of losing their status as global hubs, where goods get redistributed to be shipped to locations all over the world.



- The European Commission should intensify its talks with trading partners, to minimise the risk of a backlash when foreign shipping companies will have to follow the obligation when calling at European ports. Furthermore, the Commission should encourage partners to increase the availability of SMF at major seaports.
- Given the difficulty of procuring SMF internationally and the limited ability of companies to control international supply chains, shipping companies should not be held liable if they fall victim to wrongfully declared sustainable maritime fuel despite their best efforts to ensure the integrity of the fuel supply.
- The Commission shall closely monitor the situation of EU sea ports and shipping companies. Should it become apparent that Europe is losing its status as a logistics hub as companies try to avoid the FuelEU obligations, the Commission should address this in the review of the regulation by 2030. In this review, the Commission should take into account the cumulative carbon leakage effect of the different instruments impacting maritime shipping (FuelEU, extension of the ETS, changes in the Energy Taxation Directive).

DUTY TO CONNECT TO ON-SHORE POWER SUPPLY (OPS) FOR ALL ENERGY NEEDS AT BERTH FROM 2030 ONWARDS (ART. 5)

In addition to the regulation of the energy used in ports by including it in the emission intensity limits spelled out above, the regulation also provides for a duty to connect to on-shore supplies for passenger and container ships, with only limited exceptions such as emergencies, ships using zero-emission technologies (Annex III) and where there are no connection points available, or the connection equipment is not compatible. The latter two cases are to be limited to 5 occurrences per ship and reporting year (provided that the shipping company could have reasonably known about the issue) from 2035.

With this rather stringent rule, which has its own set of penalties attached and can lead to enforcement actions ranging all the way to a ship's expulsion, the legislator would put a significant burden on the shipping operators, while not providing a reference to the actual availability and roll out of OPS connection points in member state ports.

- Shipping companies should not be held responsible for failures to provide infrastructure by ports and public authorities. Therefore, whenever the Commission finds a national policy framework under the AFIR unsatisfactory with regards to port infrastructure, or demands corrective action on this issue by a member state, non-compliant port calls in that member state should temporarily not count towards the limits set in Art. 5.

REQUIREMENTS FOR THE USE OF BIOFUELS, RFNBOs (ART. 3 (B-F), 9)

The regulation takes over the definitions for biofuels, biogas, recyclable carbon fuels, and renewable fuels of non-biological origin from the Directive (EU) 2018/2001 (REDII), which is a good step towards a coherent regulatory framework (Art. 3b-3f). Similarly, biofuels will have to comply with the sustainability criteria in that Directive, as verified by a voluntary or a national scheme, recognised under Art. 30 (5-6) of Directive (EU) 2018/2001. Otherwise, emission factors shall be equal to the "least favourable fossil fuel pathway for this type of fuel" (Art. 9.1 (c-d) which applies a rather stringent threshold.



- BusinessEurope is currently calling for expanding the list of possible feedstocks in Annex IX a) and b) of the Renewable Energy Directive. Any such change should also be dynamically recognised for use for FuelEU purposes.
- Given that the [Commission is only now starting to recognise](#) voluntary schemes for the verification of sustainability and GHG savings criteria for biofuels and RFNBOs, at least in the beginning, the default emission assumptions should be the median values for that kind of fuel, and not the “least favourable fossil fuel pathway for this type of fuel”.

FLEXIBILITY PROVISIONS WITH REGARDS TO THE BALANCE OF COMPLIANCE UNITS (ART. 17, 18)

It is positive that the proposal allows for some flexibility in the attainment of the intensity reduction targets laid out in Art. 4, especially by giving shipping companies and owners the opportunity to pool the compliance units for their ships (Art.18), as well as by allowing limited “banking and borrowing” (Art. 17). The latter refers to the practice of being able to transfer any over-fulfilment of the compliance balance to the following year (banking), as well as to balance out a compliance deficit by increasing the compliance target for the next year (borrowing).

- While it is prudent to provide some limits on the practice of “borrowing” from an advance compliance surplus, the introduction of a “penalty factor” of 10% does not follow necessarily (Art. 17.2). After all, the limits are already decreasing over time, and the “borrowing” in any case is limited to amounts not exceeding more than 2% of the compliance balance, and it may not occur in two consecutive compliance periods. The 10% penalty factor should therefore be removed.
- The proposal does not envisage voluntary cooperation to value emissions reductions obtained from activities outside the emission intensity of shipping obligation. BusinessEurope supports a well-designed mechanism of high-quality and credible offsets of GHG outside the shipping sector. This would provide additional cost-effective flexibility and limit the risks of non-compliance. The offset would have to follow stringent criteria and limits, so that the mechanism does not disincentivise core investments by adding large quantities of low-cost credits.

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