ERT

Expert Paper

Appraisal of recent EU initiatives aimed at improving European competitiveness

June 2023

Table of Contents

Introduction & Scope 3

Executive Summary 4

1. The Single Market at 30 6

Key Priorities for ERT 7

2. A long term view of competitiveness 8

3. EU State Framework (in particular TCTF) 11

Comparison with ERT position, shortcomings, and open questions 12

4. Reform of the Electricity Market Design 14

Positive elements and comparison with the ERT paper 15

5. Net Zero Industry Act (NZIA) 17

6. Critical Raw Materials Act (CRMA) 20

Comparison with ERT draft Paper on Critical Raw Materials Act 20

Annexes 22

1. Speech by President von der Leyen 22

2. European Council Conclusions 23

Introduction & scope

The decline in the EU's competitiveness has several causes:

- A very complex regulatory and incentive framework, which struggles to attract private investments into the EU and boost innovation in companies based in the EU.
- The high cost of energy in the EU.[1]
- The increasing fragmentation in the Single Market.
- The attractiveness of the Inflation Reduction Act (IRA) in the USA.
- In addition, the EU has a significant dependence on China which has a dominant role in the supply chain of digital tech and green tech (e.g. net-zero equipment and components, as well as critical raw materials).

To raise awareness about the pressure on industry and share recommendations with political leaders and policymakers, ERT stepped up its advocacy:

- An **Industrial Competitiveness Alert** was issued in October 2022 describing the downsizing and closure of manufacturing facilities in the EU in the past year, particularly in energy-intensive industries, such as steel, aluminium, chemicals, fertilisers, cement, glass and ceramics.[2]
- An internal analysis of the attractiveness of the IRA formed the basis of recommendations issued in **ERT Letters** to the European Council.[3]
- ERT Delegations had **high-level meetings** in early March with President von der Leyen, the Swedish Prime Minister, and the Spanish Prime Minister.[4]

This Note contains an initial appraisal of various initiatives aimed at improving the EU's competitiveness, which the European Commission published in March 2023 after the adoption of the Green Deal Industrial Plan on 1 February:

- **Communication on the Single Market at 30** – page 6
- **Communication on Long-term competitiveness** – page 8
- **Temporary Crisis and Transition Framework (TCTF)** – page 11
- **Legislative proposal to reform the Electricity Market Design** – page 14
- **Legislative proposal for a Net Zero Industry Act (NZIA) and a Communication on the European Hydrogen Bank** – page 17
- **Legislative proposal for a Critical Raw Materials Act (CRMA)** – page 20

The analysis below focuses on the main parts relevant to European industrial companies, a comparison with any previous messages from ERT, a positive appraisal of progress, and a list of shortcomings and open questions per initiative.

This Note was circulated within ERT to fine-tune the analysis of the EU's package. In addition, it can serve as a basis for formulating new policies to improve the EU's competitiveness.

1 In addition, carbon costs are also an increasing cost for EU-based companies, especially the energy-intensive industries, both on the European power price and direct allowance costs. This is a factor of competitiveness as international competitors do not pay both of these substantial costs.

2 ERT Industrial Competitiveness Alert (October 2022).

3 ERT Letters were released in December (link) and in February (link). In addition, most recently, at the end of March, ERT launched a new flagship report on "Innovation Made in Europe".

4 ERT messages were outlined in a "Competitiveness briefing" that is available on the ERT website.

Executive summary

Whereas competitiveness is higher on the EU agenda, there are limitations in the EU's institutional set-up and the focus or impact of the recent Commission's initiatives.

During the mandate of Commission President von der Leyen, competitiveness has not before featured so prominently on the European agenda. The package in March is possibly even the most comprehensive EU effort to support European companies in at least a decade. It is also the most significant attempt ever in Brussels at shaping an EU industrial policy.

There are various positive elements as well as shortcomings in the package. Several industrial leaders have expressed disappointment in the media[5] because the nature of the measures under the EU's response does not match the speed and simplicity of the IRA in the USA, where tax incentives for 10 years are very attractive for companies. However, given the institutional set-up of the EU, the European Commission does not have the competence to decide on tax incentives that are directly applicable across the entire EU.

The EU cannot copy/paste the approach that the US is using, so the response of the European Commission should be evaluated within its current "action radius". Therefore, the EU needs to use those tools that fall within its (current) power, such as relaxing State aid rules, proposing legislation, adopting delegated acts, and issuing non-binding Communications or guidance towards EU Member States.

When evaluating the initiatives of the European Commission in March, we note that:

1. The (non-binding) **Communications on the Single Market and Long-term competitiveness** contain some aspirations that could improve the business environment, but only if these are further beefed up and adequately followed up on:

    - Despite advocacy from ERT and other associations, the Commission has not formulated any ambition to shape an encompassing programme to deepen the Single Market, address barriers and simplify regulatory frameworks.
    - The Commission did commit to publishing proposals by the autumn to reduce reporting requirements of companies by 25%. Furthermore, the ERT's call for tracking competitiveness through a set of KPIs has somewhat been taken up.

2. The **Temporary Crisis and Transition Framework (TCTF)** is a further flexibilisation of State aid rules to enable EU Member States to grant more State aid faster.

    - ERT remains concerned about distortions to the level playing field within the Single Market, but the TCTF is generally seen as positive by the energy-intensive industries. However, as the framework has a temporary application (until the end of 2025), the need for more structured financial support remains high.
    - Currently, there is no new money foreseen at the EU level. However, a **European Sovereignty Fund** would be proposed by the summer.

3. **Legislative proposals:**

    - The **Electricity Market Design** reform will be targeted and not completely overhaul the current functioning of the electricity market and pricing (as recommended in an ERT paper)[6].
    - The **Net-Zero Industry Act (NZIA), the Critical Raw Materials Act (CRMA) and the set-up of a European Hydrogen Bank** aim to scale up the EU's production of clean tech needed to cut emissions. For the first time, targets have been set by the EU for the domestic production of a well-defined list of "strategic" clean tech (at least 40% by 2030). The NZIA and CRMA also contain efforts to accelerate permitting processes, which is a recurring request from ERT, but the implementation will depend on local authorities.

---

5 FT, *EU industrialists attack Europe's counter to Biden green bonanza*, 21 March 2023 (link)

6 ERT Expert Paper on the Electricity Market Design, March 2023 (link)

An initial analysis reveals that **these recent initiatives will do very little** to:

- Reduce the cost of energy in the EU.
- Support energy-intensive industries in the decarbonisation transition.
- Actively address the fragmentation in the Single Market, drive harmonisation and enable large-scale investments in the EU and SMEs to expand rapidly.
- Map all the burdens on companies and then systematically reduce the complexity of the regulatory frameworks, simplify regulation, streamline reporting requirements, remove barriers to doing business and speed up administrative processes.[7]
- Support a more innovation-friendly framework in the EU, fund more (breakthrough and close-to-market) innovation[8] and upskill the workforce.
- Drive an ambitious international trade agenda (concluding new Free Trade Agreements) and beef up trade defence instruments.

Building an EU industrial policy should not overshadow the need for fundamentally improving the EU's business climate.

The package lacks a thorough analytical assessment of the EU's competitive position in international comparison. Hence, the proposed measures mark a substantial shift away from the EU's traditional, more liberal-minded ideals, making way for a more interventionist approach ("dirigisme") in which the state has a revamped role to steer the economy. EVP Frans Timmermans summarised it as follows: *"For too long, Europe thought the market would take care of everything itself (…) We now understand that the strategic choices China made a decade ago are now coming home to roost and we also have to make our own strategic decisions now for the decades to come."*

Whereas ERT welcomes a more assertive industrial policy at EU-level, **this package is not containing sufficient measures to fundamentally improve the EU's business environment and investment climate** (which was the key ask from ERT's Letters to the European Council). The package still falls short of a more encompassing agenda that can tangibly improve the competitiveness in the EU for all companies and is unlikely to lead to significantly better business cases for large-scale investments in the EU.

The initiatives are mainly geared towards the Green Deal agenda, focusing in particular on the production of clean technologies, and not sufficiently on the decarbonisation transition of energy-intensive industries (to avoid their relocation to non-EU countries) or on boosting digital infrastructure. This package is a far cry from the "Lisbon Agenda" that was crafted in 2000 with the ambition to make the EU "the most competitive and dynamic knowledge-based economy in the world" by 2010.

Unless and until such a new Agenda is designed, it is very questionable if the EU will manage to catch up with the US and China; and reverse the declining trend of the global market share of the EU's industry's value-added, knowing that the EU industry already lost 30% of global market share in the past 2 decades (from 20.8% in 2000 to 14.3% in 2020).[9]

In sum, *The Economist* rightly stated that: "Instead of copying the protectionism and meddling of other governments, the EU should draw on its strengths: a free internal market, limits on state subsidies and a vigorous trade policy."[10]

7 Faster procedures are needed i.e. in EU competition policy, IPCEIs and Next Generation EU plans.

8 To illustrate the magnitude of the exercise required by public administrations: to unlock more innovation and improve the regulatory framework, it may even be needed to revise the role of the EU Court of Auditors, whose strict procedures negatively affect EU-funded innovation projects because it will always be challenging to prove certain results during the application process for such funding.

9 ERT Benchmarking Report 2022 (link)

10 The Economist, How the EU should respond to American subsidies, 23 March 2023 (link).

1. The Single Market at 30

Positive aspects

The Communication recognises that:

- The Single Market is the EU's **key asset and driver of its competitiveness.**
- A **collective effort**, at the EU and national levels, is required to continue maintaining and deepening the Single Market.
- A renewed focus is needed on:
    - **Enforcing existing Single Market rules**, supported by benchmarks to address the deficits related to transposition and implementation of EU rules.
    - **Removing Member State-level barriers**, in particular barriers to the cross-border provision of services, and in the industrial ecosystems with the greatest economic integration potential (retail, construction, tourism, business services and renewable energy sector).
- The Commission also proposes to set a benchmark of solving a minimum of 90% of cases within 12 months brought to the national SOLVIT centres.
- The Commission furthermore aims to simplify obligations for Member States to notify national rules and set up **national Single Market Offices** among different measures foreseen to reduce and prevent barriers in the Single Market.
- The Commission will monitor progress of the Single Market with tools like the Single Market and Competitiveness Scoreboard and Annual Single Market Report (ASMR)

Shortcomings / Criticism

Unfortunately, none of the key recommendations from ERT have been taken up, expressed through a Joint Statement with other business associations as well as through the "Competitiveness Briefing" for the high-level ERT meetings in March 2023 (including with President von der Leyen).

- Contrary to what ERT advocated for, the Communication is not ambitious, concrete and forward-looking enough. Although some of the aspirations are positive, in particular the references to removing barriers and improving enforcement, **it is unclear what will change in practice at EU level, besides some bureaucratic tweaks to improve efficiencies...**
- There is no announcement to shape a new encompassing programme to deepen the Single Market or radically improve the governance of the Single Market (including the toolbox for removing intra-EU barriers).

It took 1,5 years before ERT received feedback from the Commission on few of the 30 stories on barriers highlighted by business leaders in the flagship publication on "Renewing the dynamic of European integration". Yet, there is **no reflection on how to strengthen the mechanisms to deal with barriers, enhance the Single Market Scoreboard and the Annual Single Market Report** or **on how to improve the uptake of their observations for future policy-making purposes.** Even though the Scoreboard and ASMR contain some interesting macro-economic analysis of the Single Market, they focus insufficiently on barriers encountered by companies and they do not outline any conclusions or recommendations concerning the need to address the Single Market barriers better.

Whereas the Communication mentions that 60% of the barriers reported by businesses today are the same type as were reported 20 years ago, and refers to the issues at Member State level regarding the transposition deficit of Single Market directives and unjustified "gold plating" (conformity deficit), **it falls short of proposing tangible measures to improve the culture of compliance and rigorous and more uniform application and enforcement.**

The business community wonders:

- Whether the scope of the Single Market Enforcement Task Force (SMET) is limited and how its progress on barriers is evaluated?
- How and when the staffing in several SOLVIT centres would be increased?
- Why does the Commission not mention clearly Member States where the capacities are currently insufficient? And why does it not propose targeted recommendations to tackle these issues?
- Whether the creation of a dedicated Single Market Office at national level is going to improve the situation? How should it interact with SOLVIT?
- Why is the Communication calling for more "renewed political commitment" but doesn't propose a new encompassing programme to generate that political commitment? ERT and other actors in the business community remain convinced that a fundamental upgrade of the entire governance of the Single Market is required so that barriers faced by companies would be addressed more assertively.

The Single Market is increasingly approached through the prism of the need to map out strategic dependencies and secure supply chains (e.g. page 9 of the Communication or see several chapters of the ASMR) **rather than through the lens of further integrating the economies,** simplifying frameworks, promoting efficient domestic market structures to drive investments and bringing down cross-border barriers to allow companies to scale up faster and benefit from a real Single Market of 450 million citizens. The focus should be much more on further integrating the economies of EU Member States and on reducing the complexity of the EU regulatory framework so as to improve the conditions for doing business in the EU.

Key priorities for ERT

The key priorities for ERT remain equally valid as before the Communication was released:

- **Spearhead a new encompassing programme to fundamentally deepen the Single Market** in all policy fields (ranging from Energy, Digital, Environment to Capital), working together across various DGs and with EU Member States.
  - Such an "encompassing programme with an agenda for action until 2030" was also requested by the European Parliament in a resolution in January 2023 (see § 47) and remains necessary to muster the political attention and administrative capacity to actually remove barriers.
  - The capacities of DG GROW should be significantly increased, or a new DG INTEGRATION should be created to continuously deepen the Single Market and mainstream the removal of barriers across all DGs.
- Promptly start a **comprehensive mapping of all barriers as well as the fragmentation in the regulatory framework** – across all Directorates-General, and in collaboration with EU Member States, but avoiding imposing additional barriers or other burdens (including reporting requirements) on EU businesses. At the same time, outline options to improve 'enforcement' of the EU acquis. This exercise should be much more far-reaching than only mapping the reporting requirements on companies with the effort of reducing them by 25%.
- Lay the foundation to improve the governance of the Single Market and strengthen the process and toolbox for removing intra-EU barriers, for instance by re-examining the Report of **Mario Monti** (2010), of which the conclusions remain valid, and/or **appointing a new "champion" of the Single Market who would be tasked with the preparation of a similar report.**
- **Incorporate into the European Semester instructions for EU Member States** to remove barriers and simplify regulatory frameworks. Currently, there are no conclusions drawn from the "Single Market Scoreboard" or the Annual Single Market Scoreboard. Hence, recommendations should be developed to EU Member States.

2. A long-term view on competitiveness

Overall impression

In her speech before the European Parliament on 15 March, President von der Leyen said: "We must make sure that regulatory and administrative frameworks are responsive to business needs. In the future, we will be guided by a series of key performance indicators, which can tell us whether Europe's economy is really becoming more productive and competitive. Because what gets measured gets done."

The repeated concerns from the business community (including by ERT) and the pressure created by the IRA in the USA seem to have finally triggered a realisation in the European Commission that Europe's competitiveness is really at risk. Through this Communication, the Commission recognises the urgency to act ("make or break moment for the EU's long-term competitiveness"). And there are several positive aspirations in the text (see below).

However, **there is no thorough assessment of the overall investment climate in the EU and no precise analysis of the EU's competitive position in international comparison.** Hence, there is no clear vision of what the Commission should do to boost competitiveness until and beyond 2030, and the concrete actions mentioned are neither ambitious nor strategic. Rather than presenting a bold ('do what it takes') roadmap, the Commission mostly reiterates recent or ongoing initiatives and proposes a set of KPIs. Having campaigned for tracking the EU's competitiveness through repeated Benchmarking Reports in the past years, ERT can be satisfied that this approach will be taken up by the Commission. However, whether this Communication will eventually make a tangible difference will heavily depend on how seriously the European Commission takes the measurement of these KPIs and whether the findings will be effectively used to orient policy and investment decisions.

Furthermore, a promising element is the Commission's announcement to increasingly use regulatory incentives rather than prescriptive approaches (resonating with the ERT argument that lawmakers should rely more strongly on 'carrots than on sticks'). Yet, this would require a cultural change throughout the Commission and – even if the commitment survives the 2024 leadership change – it would only be reflected in legislative proposals as of 2025.

Positive aspects

It is positive to see a first attempt by the Commission at improving the business environment and investment climate in the EU. This was so far lacking. The proposed initiatives are very much welcomed by ERT but such measures need to be increased, expanded and properly implemented:

- The EU aims to present by the autumn proposals for a **25% reduction in the overall burden of reporting.** It should push for the rationalisation of reporting requirements across the EU's green, digital and economic legislation.

- To foster competitiveness, a set of **17 Key Performance Indicators** has been proposed to track progress towards targets (either in terms of values or trends). The Commission will report to the European Parliament once a year on the developments in these KPIs, most likely through the revamped "Single Market & Competitiveness Scoreboard". However, a qualitative analysis with conclusions for future policy and investment decisions should be added!

The Commission calls for the necessary political focus and responsiveness on a range of **9 drivers for competitiveness:**

1. A functioning Single Market by broadening and deepening it, and fostering the integration of services
2. Access to private capital and investment by deepening the Capital Markets Union and completing the Banking Union
3. Public investment and infrastructure
4. R&I through tax incentives, public-private partnerships & large-scale projects
5. Energy through the fast roll-out of renewables, the digitalisation of energy systems and energy storage facilities
6. Circularity
7. Digitalisation through broad-based take-up of digital tools
8. Education and skills
9. Trade and open strategic autonomy by continuing to open markets for EU companies through deepening ties with allies and trading partners

The EU needs to **increase its investment on Research and Innovation to make good on its commitment to 3% GDP** by 2030, and more beyond, and to catch up with the most advanced economies on these fields.[11]

Other efforts to improve the framework:

- The Communication envisages the development of a more innovation-friendly approach to regulation, using **regulatory sandboxes** and testbeds and incentives-based regulatory models.
- Commission will also consider applying **regulatory models which incentivise rather than prescribe**, and therefore reduce compliance costs.
- The Commission will continue to regularly assess the EU legislation to see whether it remains fit for purpose, and it will explore making better use of **sunset and review clauses** in its legislative proposals to ensure regulation remains future-proof.

In the media, it was reported that the Commission's regulatory scrutiny board — an oversight body that reviews all EU legislation before being adopted — would also be strengthened to focus "on the impact of Commission proposals on competitiveness." Two additional members of the board will be brought on to focus on this area.

Shortcomings

The Communication is not-binding, meaning that results will heavily depend on its implementation.

For the *reduction of the burden of reporting requirements on companies by 25%*, it will be important to encourage the Commission to be ambitious, in the scope and focus of this exercise. It is unclear if this effort would benefit all companies or only SMEs. In the field of sustainability reporting, it is essential that progress is made quickly on streamlining the reporting and rendering the reports more useful.

Beyond reporting requirements, a much bigger effort is required to reduce the complexity of legislation, **reduce administrative burdens and remove barriers (including within the Single Market)**. The Commission claims it will continue to regularly assess EU legislation to ensure it remains future-proof and fit for purpose so horizontal, cumulative Fitness checks and Competitiveness Checks should be beefed up substantially.[12]

The *proposed KPIs are very general and macro-economic in nature*, and the devil will thus be in the details of 'how' the KPIs are monitored and used:

- The KPIs are limited to Europe, whilst competitiveness is always relative to global peers. ERT has always advocated for international benchmarking.
- ERT advocates in favour of giving more political visibility and administrative follow-up to the KPIs that will be presented every year in the Single Market Annual Report and Scoreboard. Otherwise, these remain just a set of facts and figures that would not lead to tangible actions in function of the 9 drivers of competitiveness.
- It will be challenging for the Commission to make concrete progress on the Single Market KPI as it is loosely defined. Furthermore, there is no clear effort to track Europe's scaling up of key strategic technologies.

11 In this regard, to reach policy goals on competitiveness, any State aid R&D&I Plan should entail the funding of the end-to-end value chain, not only the First Industrial Deployment

12 The "new" initiatives do not sound very convincing and do not contain many details. The Commission mentions amongst others: (1) The new "competitiveness check" will ensure that the impact assessments of legislative proposals present in an integrated manner the expected impacts of each proposal on cost and price competitiveness, international competitiveness and the capacity to innovate, and also on SME's competitiveness ; (2) The forthcoming "Annual Burden Survey" will show first results ; (3) the last "Fitness check" of Reporting and Monitoring of EU Environmental Policy [SWD (2017) 230] reviewed 180 reporting obligations in 60 pieces of legislation.

Regarding *skills*, even though the Commission signals that the 2023 European Year of Skills should promote a mindset of re-skilling and up-skilling, and that it will seek to embed vocational education and training into planned economic reforms and sectorial strategies, it does not have the means to address the growing skills gap substantially.

For *digitalisation*, the Commission is reiterating existing proposals/ programmes without announcing any decisive new actions, and without acknowledging how far Europe is already falling behind in terms of technological leadership and implementation of state-of-the-art technology and connectivity. Digitalisation and state-of-the-art technologies and connectivity are crucial for Europe to reduce the technological gap, accelerating the digital and green transition and driving the industrial base competitiveness. There are no KPIs for European service or infrastructure provision, only for adoption.

On the *role of private capital and investments*, the Commission does not seem to have a comprehensive vision:

- Deepening the Capital Markets Union is a generally accepted priority (ERT also is calling for this), but the Commission's messages are limited to asking the co-legislators to adopt the Commission's existing proposals with no indication of a clear timeline.
- The statement that financial services legislation "should harness opportunities of innovation and technology change" is vague to the point of being meaningless.
- The Commission is calling for an increase in funding for InvestEU and a European Sovereignty Fund to 'crowd in private investments' to support the twin transition. Funding is already available, especially compared to international competitors. The issue lies on financing's accessibility – which is not discussed in the Communication.

Regarding *infrastructure investments* the Commission recognises a need to increase capacity and modernise energy, transport and connectivity infrastructure but does not announce action. The Commission calls to simplify, accelerate and harmonise digitalisation and regulatory processes but does not announce any concrete solutions. A new element is that public procurement tenders should be designed to enable participation by SMEs.

The *innovation potential* is presented as a priority, but the additional tools to promote it are very weak. The focus remains on supporting start-ups and scale-ups and on measures already implemented or announced as part of the New Innovation Agenda (July 2022). The only concrete new measures named are tax-based incentives for R&I activities (which are Member State competence) and broader use of regulatory sandboxes and testbeds (already mentioned for some sectors in the Green Deal Industrial Plan). There is no reflection on the ERT's analysis that emphasises the need for a comprehensive approach to drive innovation beyond R&D, to encourage industrialisation and mass commercialisation, accelerating the process of bringing an innovation from the lab to the market more efficiently and faster. For Europe, the business case for innovation must be improved to trigger private sector innovation investment, and that for this greater coherence of legislation is key.

3. EU State aid Framework (in particular TCTF)

Relevant parts for industrial companies

On 9 March 2023, the European Commission approved two revisions of its State aid framework enabling Member States to provide increased, faster, and more flexible support - in the form of national subsidies - to accelerate the EU's green and digital transition.

General Block Exemption Regulation (GBER)

The GBER allows Member States to declare certain categories of aid compatible with the internal market without prior notification to the European Commission.[13] It concerns amongst others the roll-out of renewable energy, decarbonisation projects, green mobility, renewable hydrogen and energy efficiency. The application of the GBER has been extended until the end of 2026. The overall level of aid has been raised to give more freedom to Member States to support projects meeting the eligibility criteria, and especially for renewable energy production.

Temporary Crisis and Transition Framework (TCTF)

In parallel, the Commission adopted a new TCTF (after the adoption of the Temporary Crisis Framework [TCF] in October 2022) which introduces new measures to accelerate investment in sectors that are essential for the transition to a net-zero emissions economy. Unlike the GBER, the TCTF does not provide for an exemption from notification so Member States must notify their planned aid schemes on this basis before these enter into force. Schemes may be set up by Member States until 31 December 2025 for:

- accelerating the **rollout of renewable energy** and energy storage[14]. It includes simpler rules for aid to small generation projects and less mature technologies, e.g. renewable hydrogen. Aid is now possible for all types of renewable energy sources.
- **decarbonisation of industrial production processes** through electrification and/or the use of renewable and electricity-based hydrogen and for energy efficiency.[15]
- the **production of relevant equipment** for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps, electrolysers, and equipment for carbon capture usage and storage (CCUS) (including the key components or the critical raw materials for the production)[16].

A real novelty of the TCTF is the **"matching aid" clause**. In exceptional cases, Member States can provide **higher** support to individual companies, where there is a real risk of investments being diverted away from Europe. Member States may provide either the amount of support the beneficiary could receive for an equivalent investment in a third country location (the so-called 'matching aid'), or the amount needed to incentivise the company to locate the investment in the EU (the so-called 'funding gap') whichever is the lowest. This option is subject to several safeguards, such as:

- The aid can be used only for: (i) investments taking place in assisted areas or (ii) cross-border investments involving projects located in at least three Member States.
- The beneficiary should use the latest commercially available state-of-the-art production technology from an environmental emissions perspective.
- The aid cannot trigger the relocation of production activities between Member States.
- The beneficiary must maintain the investment for at least 5 years (3 for SMEs).

13 The GBER revisions also include exempting training and reskilling aid below €3 million; block exempting aid measures set up by Member States to regulate prices for energy such as electricity, gas and heat produced from natural gas or electricity; significantly increase notification thresholds for environmental aid as well as for RDI aid; clarify the possibilities for risk finance aid, for small and medium-sized enterprises ('SMEs') and start-ups, as well as for financial products supported by the Invest EU Fund.

14 See section 2.5 (and is linked to REPower EU), containing conditions set out in section 2.5.1 (investment aid) and 2.5.2 (operating aid) with simpler rules introduced for aid to small generation projects and less mature technologies, such as renewable hydrogen, by lifting the need for a competitive bidding process.

15 See section 2.6, with a new ceiling of EUR 200 million per undertaking, expanded support possibilities for the decarbonisation of industrial process switching to hydrogen-derived fuels 2.

16 See section 2.8.

Comparison with ERT position, shortcomings, and open questions

The ERT Letter to the European Council (February 2023) invited the Commission to work on a TCTF that should be a bridging solution to avoid a (further) weakening of the EU's industrial base and competitiveness, but it stressed that focus on the long-term was key. The recommendation was followed by the Commission in the sense that the TCTF is valid until the end of 2025, whilst the Commission is set to propose a European Sovereignty Fund by the summer that would be applicable for the longer term.

Views on the benefits and the possible effects of the TCTF differ across companies.

Given that Member States are free to decide how to spend their own money, and that national priorities and fiscal capacities differ, the approach and disbursement of aid may result in a fragmented treatment of companies across the EU and entail a risk of unbalancing the level playing field within the internal market. Some companies fear this could cause severe distortions on the internal market. It risks to be detrimental to employment and consumers in smaller Member States, and lead companies, in particular larger companies, to shop for subsidies in EU Member States.

Other companies argue that large companies always look for the best investment opportunities, and that regulatory stability and a skilled workforce are equally important. Moreover, getting decarbonisation projects up and running is essential to bring costs down. The benefits are not limited to the "host" Member State only. Given the temporary nature of the TCTF, the concerns about fragmentation should not be exaggerated. In addition, larger Member States may have more industry to support, whereas smaller Member States may have the same or more money available for their industry (per ton of steel for example), but as they are smaller, the total amount per country will be smaller. The TCTF does not have to be detrimental to employment and consumers in most smaller Member States, and will not to a large extent lead companies to shop for subsidies in EU Member States (large industrials cannot just be relocated from one country to another; so the aid is mainly avoiding that industry would have to close). If Europe wants to maintain an industrial base, the key issue is not the preservation of the level playing field in the Single Market, but to deepen the Single Market, improve EU industry's ability to face international competition and avoid investment leakage to non-EU countries.

According to energy-intensive industries, the TCTF has some merits but there are shortcomings in terms of its focus and procedures:

- In general, EU State aid measures are considered helpful in supporting investments of the energy-intensive industry. The revision of the GBER is also positive as it aims to introduce more flexibility, e.g. in areas key for the industry's green transition.
- The TCTF has some provisions for energy-intensive industries (chapter 2.6 and 2.8), but these have a temporary application and are not structural. Other measures will therefore have to be designed to support the decarbonisation transition over a long period of time in order to avoid relocation to non-EU countries.
- The energy cost support measures in the TCTF mainly aim at avoiding industry closures and helping – temporarily – companies which are already in financial difficulties. Hence, they do not address the need to maintain the long-term competitiveness of European industry. In addition, current support for investments in new low-carbon technologies is insufficient, especially for energy-intensive industries, which are particularly hit by the energy crisis and require transformative, large-scale investments. Thus, the TCTF is not a sufficient response to schemes in other countries (e.g. IRA), which are designed for long-term and large-scale investments.
- **EU State aid rules remain very complex**, with strict requirements and cumulation rules. For instance, one of the current system's main limits is the complexity of the application process (which requires counterfactual scenarios, lengthy business plans with detailed assumptions over long periods and possibly revisions during the approval process) and the "needs-based approach" that gives the Commission a large margin of discretion, making investment planning difficult. Furthermore, financial support is not allowed for intermediary decarbonisation steps to trigger the initial investment. These limits hamper the transition of hard-to-abate sectors and companies, whereas the transition should be encouraged in all possible ways.[17]

[17] Financial support is conditioned upon the sole use of renewable energy and not locking in fossil fuels, even though renewable energy is not yet sufficiently available. Therefore, policymakers should consider supporting the use of any colour of hydrogen whenever the use of H2 already leads to decarbonisation in the transition phase. It can then be substituted later on by renewable H2 if and when available in a stable manner at the required quantities and at competitive prices.

- The TCTF is lacking proposals on how to reduce and speed up bureaucratic processes for funding application processes and approvals, as well as proposals for faster and less bureaucratic permitting processes for industrial projects (as described in the NZIA for strategic technologies). It is vital to reduce the admin burden.

Several open questions remain to be discussed, monitored and clarified:

Which companies are really able to make use of the GBER & TCTF provisions?

- As each of the schemes is subject to several conditions, it will be relevant to identify any schemes that would be helpful to companies or that would effectively prevent or rule out eligibility for participating in that scheme.[18]

- To what extent will Member States be able and willing to use the GBER and TCTF provisions to give more and faster national aid to companies for the transition towards a net-zero industry?

Is the temporary nature of the TCTF (until end of 2025) appropriate? Given the limited timeframe within which aid schemes should be designed, Member States must act quickly.[19]

Will multinational corporations be in a better position to invest in the EU thanks to the TCTF (including the matching clause)? Will this be decisive for companies to avoid they would decide to invest instead in the US? The generous OPEX funding under the IRA remains very attractive.

Who are the companies exactly which require State aid and how much do they receive or need?[20] Has a comprehensive mapping been undertaken on the type of companies which have received State aid and which require more State aid? How much do they need, for which purposes and for how long, and in which Member States are they situated? Which evaluations are made of the (positive and potential distortive) effects of State aid?

What expectations do companies have for the European Sovereignty Fund? Does the European Commission consult the business community on their investments needs when developing a proposal for the future Fund?

18 This may be helpful for small scale investments (e.g. putting solar panels on roofs or installing heat pumps but not for the large scale industrial deep decarbonisation efforts that are required.

19 According to energy-intensive industries, the TCTF is proving to be useful as a short-term measure, especially to help alleviating the highly increased energy costs, but this type of aid will finish. The TCF/TCTF has been used by Member States in particular to alleviate energy costs but has not yet been implemented regarding the categories of investment aids. The TCTF may fail completely to trigger investment in major decarbonisation projects which take time to plan and implement.

20 Commissioner Breton and EU officials claim they receive frequent requests from companies in private meetings who say they need more financing (subsidies or tax incentives). Beyond a few anecdotal accounts, at ERT, we currently do not have an overview of the companies who request (more) State aid and which type of State aid they would welcome.

4. Reform of the Electricity Market Design

Relevant parts for industrial companies

All in all, the proposed reform of the electricity market did not disrupt fundamental market elements, contrary to previous rhetoric from the Commission and calls from some EU Member States, including France and Spain. The reform makes targeted suggestions and will not fundamentally overhaul the current system (such as upending the inframarginal system and decoupling gas and electricity prices). The reform does not include an attempt at reducing rapidly the high cost of energy, which is particularly problematic for energy-intensive industries.

The reform foresees revisions to several pieces of EU legislation – notably the Electricity Regulation, the Electricity Directive, and the REMIT Regulation. It introduces measures that aim to incentivise longer-term contracts with non-fossil power production and bring more clean, flexible solutions into the system to compete with gas, such as demand response and storage. This is expected to decrease the impact of fossil fuels on the consumer electricity bills, as well as to ensure that these bills reflect the lower cost of renewables. In addition, the proposed reform aims to boost open and fair competition in the European wholesale energy markets by enhancing market transparency and integrity.

Key elements:

- To **improve the flexibility of the power system**, Member States will now be required to assess their needs and establish objectives to increase non-fossil flexibility. They will now have the possibility to introduce new support schemes, especially for demand response and storage. The reform also enables system operators to procure demand reduction at peak hours. Alongside this proposal, the Commission has also issued recommendations to the Member States on the advancement of storage innovation, technologies, and capacities, stressing the provisions already put in place by the Clean Energy Package.

- The Commission is proposing to facilitate the deployment of more stable long-term contracts such as **Power Purchase Agreements (PPAs)** – through which companies establish their own direct supplies of energy and thereby can profit from more stable prices of renewable and non-fossil power production. To address the possible barriers, such as the credit risks of buyers, the reform aims to oblige Member States to ensure the availability of market-based guarantees for PPAs.

- To provide power producers with revenue stability and to shield industry from price volatility, all public support for new investments in infra-marginal and must-run renewable and non-fossil electricity generation will have to be in the form of **two-way Contracts for Difference** (CfDs), while Member States will be obliged to **channel excess revenues to consumers**[21]. In addition, the reform seeks to boost liquidity of the markets for long-term contracts that lock in future prices, so-called “**forward contracts**.” It is predicted that this will allow more suppliers and consumers to protect themselves against excessively volatile prices over longer periods.

- There will also be new obligations to **facilitate renewables integration** into the system and enhance predictability for generation. These include transparency obligations for system operators as regards grid congestion, and trading deadlines closer to real-time.

21 This is limited to another list of technologies: nuclear, hydro, wind, solar and geothermal.

Positive elements and comparison with the ERT paper

ERT submitted an Expert Paper to the European Commission one week before the proposal was published. ERT had indeed recommended a narrow reform as any reform going beyond targeted adjustments to the existing framework should be underpinned by an in-depth impact assessment and should not be adopted with haste.

The reform sets incentives to invest in new low-carbon generation capacities, with the aim of enabling European industry's access to sufficient volumes of renewable, non-fossil and affordable power supply which is a key enabler of decarbonisation and the green transition.[22] The measures to lengthen long-term transmission rights is also to be welcomed.

Furthermore, the fast roll-out of renewables, the digitalisation of energy systems and energy, development of flexibility and storage facilities will be key for the EU to increase energy independence. The recognition of anticipatory investments in electricity grids is welcome in this regard.

Shortcomings & improvements

The **main downside for European industry is that this proposal is unlikely to help reduce the energy cost differential with other parts of the world.** It is feared that the reform will have (almost) no effect to reduce the cost of energy on a structural basis (i.e., beyond the short-term effects linked to the energy price crisis). This "targeted" reform keeps short-term energy markets and their very high prices intact. More broadly, reducing costs for consumers in the short-term implies either regulated prices, market interventions, or subsidies. All these solutions have severe drawbacks, especially for investments in new energy production. In that sense, market reform may not be the appropriate vehicle to tackle high energy prices, and other measures should be considered.

- The reactions from industry show mainly a difference between the energy-intensive industries and the electricity companies:
  - Energy-intensive industries are unhappy.
    - The European Steel Association, said the reform "falls short on … expectations," and that "a deeper and more comprehensive approach is required."
    - The metal association Eurometaux criticised the package "as a missed opportunity … to address the critical short-term impacts of Europe's high electricity prices on strategic industries."
  - Representatives of (large) electricity companies were satisfied that the proposed reform has a narrow scope:
    - Eurelectric said: "By giving prominence to market-based solutions, the Commission has backed away from the most disruptive ideas that have been floated."
    - SolarPower Europe said the group was "grateful to have avoided [government-backed contracts for difference] as the only route to market for new solar."
    - WindEurope commended the Commission for a "proposal [that] builds on the strengths of the existing market design."

22 Building a renewables-based energy system will not only be crucial to lower consumer bills, but also to ensure a sustainable and independent energy supply to the EU. To reach the EU's energy and climate targets, the deployment of renewables will even need to triple by the end of this decade.

- Furthermore, the consumer organisation BEUC also lauded "plans to offer consumers extra protections."

- As a more radical change in the electricity market design (e.g. changing the inframarginal pricing system) may currently lack the necessary political support, it means that energy-intensive industries will remain exposed to short-term markets and their volatile, high prices. This in turns leaves EU industry with significant challenges to remain competitive, in particular in global comparison. The EU should consider seeking inspiration from the experience of other geographies which set power prices closer to the actual costs of electricity. Among potential instruments, the EU should consider encouraging the use of cost-plus contracts, especially for energy-intensive sectors.

Furthermore, while the Commission proposes to deploy **virtual hubs** beyond gas markets to increase transparency and create better hedging opportunities in the wider energy market, this could result in further disruptions and fragmentation. Similarly, peak shaving as a monopoly instrument to address energy demand and prices spikes could jeopardise incentives to develop other means of flexibility, while these will be crucial for managing the intermittency which we can expect in the future renewables-based system. Such measures should be postponed in order to conduct more in-depth impact assessments.

Supplier hedging obligations are also left for Member States to implement. As these could risk driving up prices for all consumers, they should be associated with measures (e.g. certifications and the like) to ensure the reliability of retailers.

The introduction of a **right to energy sharing** is positive. However, it should not be limited to SMEs, public entities and households but be extended to commercial and industrial players.

PPAs do not properly balance cost/risk between suppliers and buyers. Industry needs a continuous supply of energy while renewable energy sources are intermittent.

It is important that two-way CfDs consider also the downstream part in which capacity contracted under CfD between producers and EU Member States would be offered by the EU Member State to the industry under a double 2-way CFD scheme and for base-load delivery.[23]

23 CfDs need to be able to contribute to RFNBO production: To make the most out of it, the contemplated CfD mechanism should be compatible with other Energy Transition regulations, for instance RED II Delegated Act which prescribes REN contracting through non-subsidised PPA for RFNBO H2 production. The CfD mechanisms should not be seen as aid, as defined under the delegated act on the production of RFNBO. As such, the CfD mechanism should - similarly to PPAs - be able to contribute to upscaling the renewable hydrogen market. Furthermore, revenues collected through two-way CfDs must benefit the final electricity customers, notably the energy intensive industries that have been consuming electricity that is generated by sources benefitting from two-way CfDs. A pan-European clearing house could help to mitigate price/volume risk for public finances, further than on a national level. Extending the perimeter to EU neighbouring countries (Norway, Switzerland and the UK) could further help to have a more consistent and robust clean energy hub.

5. Net Zero Industry Act (NZIA)

Relevant parts for industrial companies

This act was first suggested by President von der Leyen in her speech in Davos on 17 January.[24] It has become a centrepiece of the EU's Green Deal Industrial Plan (presented on 1 February). It was prepared at record speed and drafted without impact assessment or prior consultation with external stakeholders, which is unusual for EU legislation. This may unfortunately lead to longer discussions by the co-legislators (Parliament & Council).

Key elements:

- At **least 40% of the EU's demand for clean tech should be made domestically by 2030**, by slashing permitting and incentivising investment in certain "strategic technologies".[25]
- The technologies that are prioritised are: solar energy, wind energy, batteries and storage, heat pumps and geothermal energy. The list also includes electrolysers and fuel cells, sustainable biomethane and biogas, grid technologies, and carbon capture and storage [not utilisation!].[26]
- The NZIA wants to accelerate the deployment of CO2 storage facilities. This is the first time an EU-wide target is set for CCS (to which oil and gas companies are also required to contribute) or that CCS is defined as a strategic "cannot-do-without" technology. The European Commission recognised that the limited availability of geological storage locations suitable for CO2 is partly responsible for slowing the efforts of heavy industry to decarbonise.
- The Commission proposes that Member States select projects that will help achieve the set targets and grant those quicker permitting or additional funding. The Act will **fast-track the construction of energy infrastructure and other projects** that will contribute to the net-zero push. Projects that receive a special "strategic project" status — and have an annual output of more than 1 gigawatt — would see permitting timeframes slashed to just one year; projects below that level would be greenlit within nine months.
- Public procurement of net-zero technology and auctions to deploy renewable energy sources must include resilience and sustainability award criteria (of between 15-30%). This is not much of a change, as the current State aid rules already provide for the possibility to use non-price-based criteria in renewables tenders accounting for up to 30% against the total weighed criteria. For the newly proposed State aid schemes targeted at households or other consumers there must be an open, transparent, and non-discriminatory process to assess the resilience and sustainability contribution (with a specified pass mark for products to be eligible for financial compensation under the scheme).
- The Commission is currently **not yet explicitly earmarking any new money** to achieve its aims. The "incentives" mainly come from the Commission's new **Temporary Crisis and Transition Framework**, which will simplify State aid rules for renewable energy deployments and projects aimed at decarbonising industrial processes. This will enable national governments to grant subsidies to projects targeted by the Net-Zero Industry Act as well as the Critical Raw Materials Act.
- Alongside the NZIA, the Commission also set out a plan for a multibillion-euro investment vehicle designed to grow the market for hydrogen as a clean energy alternative: the **European Hydrogen Bank**. It should begin to work this year to help produce 10 million tons of renewable hydrogen and import another 10 million tons.[27]

24 The speech is available here.

25 Both strategic and non-strategic tech will benefit from faster permitting. However, strategic tech will benefit from even shorter deadlines, while also remaining subject to the 40% target.

26 The Act doesn't include nuclear energy on its list of "net-zero strategic projects" — technologies that can benefit from the fastest permitting process — meaning it also doesn't contribute to achieving the 40 percent target for domestically produced clean energy tech. Only small modular nuclear reactors and nuclear plants with limited waste are included as second-tier priority technologies, granting them access to some general incentives such as streamlined permitting procedures.

27 The cost of generating hydrogen still tends to be higher than what consumers are willing to pay. To fix that problem, the bank will effectively subsidise sales by offering fixed premiums to producers over a 10-year period in the hope that it will encourage private investment in the sector. Some €800 million is being made available for the first auction later this year.

Initial evaluation, shortcomings and questions

The **focus on the reduction of the time to obtain permits** is very welcome and has been a long-standing demand from ERT. It should also be applied to projects under the TCTF. Nonetheless, the actual impact of these provisions, which highly depends on execution by national administrations, as the EU has no real enforcement powers, risks being rather limited.

The EU should do much more to support the decarbonisation process of the existing energy-intensive industries. It is unclear how the NZIA will help the heavy industry, in particular in the short-term. Although the TCTF allows for increased (temporary) funding for industry decarbonisation, the NZIA does not systematically support the evolution towards production of "green(er)" steel, cement or chemistry.

The **focus** of the NZIA is only on the **production of specific clean technologies** (such as batteries, windmills, heat pumps, solar, electrolysers and carbon capture & storage) so the European Commission is clearly not technology-neutral but "picks winners" and sets targets. For the EU, this is a novel– and quite interventionist – approach that **opens up several questions:**

- Are the targets realistic? Will they help to achieve progress? Are there enough incentives?
- Given that the IRA is more technology neutral, will the US remain a magnet to attract more investment from energy-intensive industries?
- Is the NZIA focusing on the right technologies? Which should be in or out?
  - A company in the paint and coatings sector flagged that it remains unclear whether power coatings which they can cure at low temperatures – an energy-saving technology that requires additional investment to scale up – would be covered under the NZIA.
  - Why are carbon capture and utilisation (CCU) and e-fuels not prioritised?[28]
  - A multinational energy company added that technologies that are crucial to achieve the EU circularity objectives included in the new Circular Economy Action Plan (2020) should be mentioned - in particular, the pivotal role of chemical recycling.
  - A shipping company noted that biogenic CO2, currently not prioritised, are a critical feedstock for green methanol production.

No new financing is currently earmarked within the NZIA which lead disappointment amongst industry groups, such as the BDI,[29] but also:

- SolarPower Europe's argued that while it's good the text aims to reduce reliance on China ("the stick"), "we need a bigger carrot, especially in terms of financing solar plants in Europe" through a "dedicated financial vehicle."
- WindEurope also said the wind sector needs more financial support, including through the Innovation Fund, to "build and install the volumes Europe wants."

The Commission will work on developing a **European Sovereignty Fund** until the summer. It may consist of repackaging existing funds (e.g., unspent money from the Recovery and Resilience Facility / Next Generation EU) during the Mid-Term Review of the Multiannual Financial Framework. Alternatively, it may entail new joint borrowing, meaning EU Member States would have access to fresh capital instead of exclusively tapping into their own budget and other existing EU funds.

Furthermore, the NZIA introduces for the first time some **criteria around "security of supply" (a European preference in public procurement)**. ERT's Letter had however warned against any "Buy European" approach. It remains to be evaluated to what extent this new orientation is helpful (and for whom) or not, how it will be implemented in practice by contracting entities, and whether this approach undermines the EU's credibility as a promoter of open trade internationally.

There needs to be **further clarification on the scope of net-zero technologies**. While sustainable alternative fuels (like SAF and renewable and low-carbon fuels for the maritime transport sector) are recognised as net-zero technologies, it remains

28 The definition of "sustainable alternative fuels technologies" should not only be extended to the production of e-fuel, but all renewable and low-carbon fuels, including those used in the road transport sector, with particular emphasis on drop-in biofuels, given their contribution in terms of energy security, supply diversification, competitiveness and decarbonisation of the sector. This would help promote the full or partial conversion of existing refineries into biorefineries. Furthermore, sustainable alternative fuels, should be included among the strategic net-zero technologies mentioned in Annex I.

29 The BDI argued that the EU should implement the kind of tax breaks seen in the U.S.'s Inflation Reduction Act in its critical raw materials proposal rather than "[refer] vaguely to other EU programmes and the member states."

unclear whether renewable and low-carbon fuels used in the road transport sector are covered. Similarly, it is not clear which technologies are covered by the wording "advanced technologies to produce energy from nuclear processes" and whether nuclear fusion is clearly an innovative net-zero technology.[30] Furthermore, the role of the ICT sector (digital tech) is not initially considered in the NZIA.

Energy efficient technologies are considered as net zero-technologies but not strategic ones, in contradiction with the energy efficiency first principle of the European Commission (and recently adopted Energy Efficiency Directive).

While the EU-wide **CCS target** is overall a positive signal, the proposal is rather unclear in detailing how injection capacity (the target is 50 million tonnes by 2030) will result into actual storage, i.e. how projects for an equivalent capacity are to be realised and adequately supported.

Instead of aiming at creating a CO2 storage market and at bringing together all important sections of a CCS value chain by creating an attractive business case, the NZIA sets a specific obligation on one specific industry (oil and gas) to invest in only the last segment of a complex, interconnected value chain. Driven by such a narrow mandate, companies establishing **CO2 injection capacity** are running the risk to invest in stranded assets and an unmarketable service. A mandate to establish merely CO2 injection capacity, without the appropriate, harmonised value chain – including captured CO2 supply and transmission capacities – and without sufficient incentive for actually using such capacities, will not ensure a real contribution to reaching the 2030 emission reduction targets.[31]

The next step of the green transition is circular economy. For the chemical industry, for example, this means a switch to non-fossil ingredients as the buildings blocks for the chemicals (e.g. biobased). This is a massive challenge and will not happen without public support. This is currently not reflected in the proposal.

While the creation of a **European Hydrogen Bank (EHB)** is a positive step, both this Communication and the NZIA will not help the EU reach its ambitious (RePowerEU) targets to ramp-up hydrogen consumption in Europe to reduce industry's reliance on fossil fuels and feedstocks.[32] This applies to all segments of the value chain.[33]

The European Hydrogen bank aims at connecting the supply and demand side of the green hydrogen industry, and it is important to consider the offtake perspective. Compared to other sectors, shipping and aviation are hard to electrify, thus access to green hydrogen is of upmost importance for these sectors. Priority offtake for hard-to-abate or hard-to-electrify sectors, like shipping or aviation, should thus be considered. This could be supported by evidence in the form of an off-take agreement in the form of a non-binding MOU/LOI or signed offtake agreement.

Supply-side subsidies in the form of a fixed premium to lower the costs of production of green hydrogen as a key feedstock for green fuels production are also encouraged. Green fuels produced in Europe are not competitive with the US, so the fixed premium should preferably be matched to the tax credits received under the IRA.

30 Arguably, fusion energy does fall under the umbrella of Net-Zero Technologies, in light of the wording provided in the Act (i.e. 'advanced technologies for energy production from nuclear processes with minimal waste derived from the fuel cycle') and, consequently, is captured in the definition of Innovative Net-Zero Technologies (with TRL <8), thus allowing it to benefit from the provisions set out in Art. 26-27 on regulatory sandboxes. But this could be spelled out more clearly.

31 To ensure that the necessary mapping work for identifying areas suitable for CO2 storage is carried out thoroughly, it is key for such analysis not to solely rely on the obligation of upstream license-holding companies to make their site data available to the public (as stated in Art. 17.1b). Furthermore, such data would benefit from the intermediation of a national authority.

32 In order to bridge the gap between cost of production and ability to pay from hard-to-abate industries, the EHB should prioritise support in the domestic hydrogen production units in order to first develop a competitive European hydrogen economy. In addition, ensuring a level playing field between local production and imports is paramount. A cumulation between different forms of support should be made possible (EU funds and national aids) to ensure projects reach FID stage.

33 The segments and the challenges are: (1) *Upstream*; There is still no clear definition of renewable and low-carbon H2; Insufficient and slow validation of ETS IF and IPCEI applications for H2 production projects; No sufficient budget and visibility for subsidies on H2 production beyond ETS IF and IPCEI (H2 Bank tender announcement gave no budget visibility beyond 2023). (2) *Midstream*: No visibility on future tariffication methodology for H2 transport and storage; Insufficient and slow validation of IPCEI/PCI applications for H2 transport and storage projects; No sufficient budget and visibility for measures that will protect early H2 adopters from prohibitively high prices for H2 transport and storage ; and (3) *Downstream*: Insufficient and slow validation of ETS IF and IPCEI applications for H2 consumption projects; No sufficient budget and visibility for subsidies on H2 consumption beyond ETS IF and IPCEI (European Commission is blocking Member States to implement pragmatic solutions such as CCFDs, regulated power tariffs, etc.); Market distortions that create an unlevel playing field and channel scarce H2 volumes to sectors with electrification alternatives and low CO2 abatement potential.

6. Critical Raw Materials Act (CRMA)

Relevant parts

Objective: ensure the EU has access to a secure, diversified, affordable and sustainable supply of critical raw materials.

It puts forward ambitious **targets** for domestic capacities and diversification:

- At least 10% of the EU's annual consumption is for extraction. At least 40% of the EU's annual consumption is for processing. At least 15% of the EU's annual consumption is for recycling.
- Not more than 65% of the EU's annual consumption of each strategic raw material at any relevant stage of processing from a single third country

However, these targets are voluntary. It is uncertain how these may be achieved in practice.

Comparison with ERT draft Paper on Critical Raw Materials Act

The Regulation and accompanying Communication include, amongst others, the following measures:

a) *Internal (Regulation):*

- **CRM lists:** In addition to an updated **list of 34 critical raw materials** (which are of high importance for the EU economy and there is a high risk of supply disruption), the Act identifies a new **list of 16 strategic raw materials** (which are crucial to technologies important to Europe's green and digital ambitions and for defence and space applications, while being subject to potential supply risks in the future). The list will be updated every four years.
- **Permitting:** Reduce the administrative burden and simplify permitting procedures for critical raw materials projects in the EU. Selected **strategic projects** are supposed to benefit from quick permitting: two years for mining projects, and one year for processing and recycling facilities. A system for strategic projects to be notified and approved at the European level is to be set up, through the European Commission and a new **Critical Raw Materials Board** (Composed of Commission and Member States).
- **Monitoring** of critical raw materials supply chains by the Commission. Mandatory internal auditing requirement for large companies to be carried out every 2 years.
- **Investing in research, innovation, and skills** (Communication).
- **Improving circularity** of critical raw materials with a focus on improving the circularity requirements for permanents magnets.

b) *International (Communication):*

- **Diversify imports:** Establish a Critical Raw Materials Club with "like-minded parties". Expand FTAs and develop strategic partnerships (incl. Global Gateway).

Initial evaluation

The objectives and priorities addressed in the CRMA are largely in line with ERT's positions. A lot of the proposed measures, however, involve coordination among Member States rather than a fully harmonised approach at the European level. A deeper analysis will now be required to see whether these are fit for purpose. Some initial concerns are the following:

- It will be vital to clarify the relationship between the two lists (critical raw materials and strategic raw materials), better outline the regulatory ramifications of inclusion on the latter but not the former and deploy the terms "strategic" and "critical" in a clearer manner in the text.
- While the Act proposes to review the two lists within four years, ERT believes that these should be formally reviewed every two years at a minimum, with that review including a clear and established process of industry consultation, in addition to the proposed oversight of the EU Critical Raw Materials Board.
- No structured industry participation is foreseen in the **Critical Raw Materials Board.** Close cooperation with business is key.
- ERT welcomes the Act's requirement for Member States to draw up national programmes for the general exploration of CRMs, including measures such as geological mapping, geoscientific surveys, as well as the reprocessing of existing datasets. It also

supports the inclusion of a framework to systematically monitor CRMs supply risks at different stages of value chains.

- While ERT appreciates the importance of reporting on strategic CRM stocks by Member States, it urges relevant national authorities to refrain from imposing overburdening obligations on companies.

- There is a lack of clear measures to improve **access to financing** and ERT would have welcomed the provision of additional funding sources opportunities.

- ERT supports the CRM Act's inclusion of criteria for Strategic Projects that can be granted an accelerated permit procedure and deadlines to streamline processes across the EU-27, although it stresses that non-strategic CRMs also need to benefit from faster permitting rules.

- Lack of concrete measures to avoid secondary raw materials' leakage outside the EU (e.g. no direct reference to black mass). However, ERT welcomes the language in the CRM Act's accompanying Communication on updating current EU waste regulation to include waste codes for Lithium-ion batteries and intermediate waste streams to ensure their proper recycling in the EU and prevent the risk of "export threat."

- **There is no clear analysis of current trade channels or a roadmap for future trade actions.** ERT welcomes the CRM Act and accompanying Communication's efforts to diversify supply of raw materials. Based on this Communication, the EU should take concrete steps to mitigate against the excessive concentration of CRM suppliers to Europe.

- Steel has been considered and not included as a whole in the CRMA, while some specific products that are required for critical net-zero technologies production in EU are largely depending on imports (non-grain oriented electrical steels and plates for wind turbines).

- Recycling of ferrous scrap in the EU plays an important role as well. When recycled during the steel making process, it serves as a supply of iron and CRMs (e.g., vanadium, tungsten, yttrium, niobium) for numerous steel grades, which are used in key sectors providing high tech products and emerging innovations. To support recycling and reutilisation within the EU and fully exploit the circularity of ferrous scrap as a valuable secondary raw material, it should also be included in the list of strategic raw materials.

- Stockpiling can put additional pressure on already scarce supplies, while CRMs storage is often expensive, technically difficult and can divert investments from other essential mining activities. ERT therefore welcomes EU-level guidance on voluntary stockpiling measures and continues to caution against mandatory stockpiling requirements.

- The targets/objectives are well intended but the proposal falls short in providing concrete solutions on how to reach these, especially on extraction as we miss those resources in Europe.[34]

- On sustainability provisions, it is unclear whether direct / indirect consumers are targeted. It would be recommended to clarify who is responsible to deliver the information on permanent magnets, and to ensure transparency (suppliers to provide relevant info).

34 Possible recommendations: (1) Consider following the Japanese example, to invest in foreign deposits and long-term commitments with third countries. (2) Consider removing relevant tax disincentives: e.g. from Germany, "according to current legislation, warehousing in Germany is disadvantageous for tax purposes, as it increases current assets and only the use of the raw materials the use of the raw materials entitles the company to a deduction for operating expenses. This disadvantage could be eliminated by adapting the tax legislation, for example a reserve for raw material inventories, which is calculated on the basis of the cost of raw of the raw materials and entitling them to an immediate operating expense deduction (Wachter et al., 2022b, 2022a). The reserve would thus only lead to a delay, but not to a reduction in profit taxation from the taxation from the sale or use of the raw materials." (source: Annual Report of the Council of Economic Experts, p. 399). Of course, fiscal policies are of national competence but as many provisions read "Member States may / shall ...", there should be legal space to make provisions along this line (see Art. 25)

Annexes

1. Speech by President von der Leyen

President von der Leyen held a speech in the European Parliament on 15 March, in which she is addressing the Commission's initiatives to improve competitiveness, ahead of the European Council on 23 March.[35]

There were several parts relevant for ERT:

But the issue of competitiveness is much broader. It concerns our internal market. And that is precisely the subject of the two communications that we will also publish tomorrow. Our Single Market is the basis of our prosperity and our competitiveness. It turns 30 years old this year. But the potential of the **Single Market is still far from having been exhausted. Studies show that if we deepen it further, we can release up to EUR 700 billion.** That does not start in the capital markets or end in R & D. [...]

Together with the Swedish Presidency of the Council, I would therefore like to propose to the Heads of State or Government that we increase Europe's common target for research spending.

My second point is about red tape. It is Europe's companies and employees that make the Single Market one of the world's most attractive economic regions. Whether it be industrial giants and global market leaders or medium-sized enterprises and family firms – their success is Europe's success. We should therefore do everything we can to make their work easier. We know that the quality of public administration and of the legal framework is key to their competitiveness. That is why we use comprehensive impact assessments to try and ensure that EU laws do not burden EU businesses but support them. However, often it is not an individual obligation to provide proof or individual condition that makes life difficult for them. It is the sum of all such requirements. We will therefore look beyond departmental boundaries to see **what really makes Europe more competitive and what we can do without. By the autumn we will put forward concrete proposals to simplify reporting requirements and reduce them overall by 25%.**

Europe's Single Market is strong. We must do our utmost to preserve and consolidate its strength. In future we will be guided by a series of **key performance indicators**, which will tell us whether Europe's economy is really becoming more competitive. How is the share of private investment evolving? How do things stand with the digitalisation of Europe's businesses? How many adults are enrolled in continuing vocational training? All these data are available. We can make an objective assessment of whether and how we are moving forward. **The Commission will therefore report to Parliament once a year on developments in these key figures.**

35 The speech can be found here.

2. European Council Conclusions

Furthermore, the Conclusions[36] of the European Council on 23 March contained several positive sentences regarding competitiveness and the Single Market. However, in spite of the positive language, it has often been the case that no tangible administrative efforts were taken to truly follow-up on the Conclusions regarding the Single Market. The proof of the pudding is always in the eating…

Selection of relevant parts for ERT:

- The European Council supports the **renewed focus on enforcing existing Single Market rules and on removing barriers**, as proposed in the Commission Communication 'The Single Market at 30'. A well-functioning Single Market remains fundamental for the success of the green and digital transitions, for our future growth and for economic, social and territorial cohesion. **The European Council calls for ambitious action to complete the Single Market**, in particular for digital and services, and address the vulnerabilities exposed by recent crises, ensuring a level playing field both internally and globally. Special focus should be put on SMEs.

- **Simplify the general regulatory environment and reduce the administrative burden**, including by accelerating permitting procedures, carrying out competitiveness checks for new legislative proposals and considerably increasing the uptake of digital solutions (such as eID and machine-readable and standardised data). Reporting requirements, notably across the EU's green, digital, and economic legislation, should be rationalised

- **Deepen the Capital Markets Union**, remove remaining barriers to cross-border finance, ease access to and mobilise private capital for investment, in particular for SMEs

- Improve connectivity within the Single Market for all Member States, including by developing and upgrading infrastructure and interconnections for transport and energy, including grids.

- Increase investment in research and development to meet the public and private expenditure **target of 3% GDP**

- The European Council invites the Council and the Commission to take work forward on all these aspects, and to **report on progress ahead of its June 2023 meeting**. Moreover, the Council is invited to assess progress annually based on Commission input, including **key performance indicators.**

36 The Conclusions can be found here.

The European Round Table for Industry (ERT) is a forum that brings together around 60 Chief Executives and Chairmen of major multinational companies of European parentage, covering a wide range of industrial and technological sectors. ERT strives for a strong, open and competitive Europe as a driver for inclusive growth and sustainable prosperity. Companies of ERT Members are situated throughout Europe, with combined revenues exceeding €2 trillion, providing around 5 million direct jobs worldwide - of which half are in Europe - and sustaining millions of indirect jobs. They invest more than €60 billion annually in R&D, largely in Europe.

This Expert Paper has been prepared by Competitiveness and Innovation working group of the European Round Table for Industry.

More info and previous papers on: https://ert.eu/focus-areas/competitiveness/
and ERT's Single Market Stories on: https://ert.eu/single-market/.

Contact: Philippe Adriaenssens (philippe.adriaenssens@ert.eu)
Judith Ay (judith.ay@ert.eu)

+32 2 534 31 00
contact@ert.eu

@ert_eu
www.ert.eu

Boulevard Brand Whitlocklaan 165
1200 Brussels, Belgium

© ERT 2023