



Graanmarkt 2, 2000 Antwerp
Belgium

15 December 2023

Summary note for High-level Report on the Future of the EU Single Market

Introduction

This note identifies, summarises and backs up at a high level the key priority topics and positions voiced by members of the Benelux Business Roundtable (“BBR”) on these topics during a working dinner held on 15 November 2023 at De Warande in Brussels in the presence of Mr Enrico Letta, as regards the future of the EU single (energy) market. The BBR welcomes the opportunity to share its views and expresses its hope that the present note provides useful input for the High-level Report on the Future of the Single Market, commissioned by the European Council during its meeting of 29-30 June 2023, which is currently being prepared by Enrico Letta.

The BBR believes the completion of the internal energy market is a prerequisite to achieving the energy transition Europe is envisaging at the lowest collective cost, while preserving a European energy-intensive industry. The governments and companies of the Benelux have been first movers in a number of areas that are vital to this transition and can therefore rely on an experience that is unique within the EU. From that position, the BBR considers the below areas to be the most crucial to completing the internal energy market, and thereby realising the energy transition in the most cost-effective way.

1. A level playing field for the industry

While the need for government funding to support the energy transition, particularly for large infrastructure, is recognised (see below), a level playing field must be maintained between market and industry players across the EU, irrespective of the member states they are based in. Loosening of state aid rules (and their enforcement), as put forward by the Commission under the Temporary Crisis and Transition Framework, must be treated with utmost care as they may lead to fragmentation of the single market, and suboptimal allocation of investments. Ultimately it may lead to less competition and undermine the functioning of the single market, the primary catalyst driving investments into the EU, with undertakings based in smaller member states and SMEs disproportionately affected.

The BBR favours a full application of the revised Guidelines on State aid for climate, environmental protection and energy 2022¹, which provide a robust framework for the Commission and national authorities to assess state aid measures in the environmental (including climate) and energy space, supporting the European Green Deal objectives efficiently (i.e. in a cost-effective and targeted manner) and with a minimum distortion of competition. Support for large infrastructure projects of common European interest is preferably organised via European, rather than national funding instruments.

2. Faster and easier access to EU funding

The road to net zero will meet with a massive funding requirement. To close the funding gap², public and private money will need to be mobilised over the coming years on a much larger scale than ever before. Large amounts of government funding will be required, particularly to upgrade our large-scale, cross-border energy infrastructures and to kickstart new markets essential to the energy transition (see below). It will also serve as a lever to unlock multiples of the public money spent in private investments.

Access to government funding often remains too slow, uncertain and difficult to obtain. Labyrinthic procedures to apply and negotiate the conditions for funding with various different authorities may be benefiting advisors, but slow down the development of innovative projects, or discourage the industry from developing them altogether. Along with regulatory uncertainty, the slow and complicated procedures to access public funding (with Innovation Fund grant agreements as prime example) are a key cause for projects to be terminated prematurely.

The BBR calls for simpler and more streamlined application procedures, involving fewer funding instruments with larger budgets (e.g. by merging different instruments together), fewer granting authorities and better prioritisation of projects which are either of key strategic and cross-national importance, or particularly promising to unlock new markets for certain energy vectors. In parallel, a discussion must be had about the preferred sources of public funding, including the possibility of issuing common European debt, as was done by the Commission for the first time in 2021 to borrow €750 billion on the financial markets to fund the Recovery and Resilience Facility. Conversations about increasing the ceiling for the EU's own resources in this way should be part of the discussion about the next multi-annual financial framework, taking into account projected revenues from

¹ OJ C 80, 18.2.2022, p. 1-89.

² To achieve climate neutrality by 2050, the EU alone needs to fill an investment gap of €350 billion annually over the next decade, according to the European Investment Bank in its Climate Bank Roadmap 2021-2025, available at: <https://www.eib.org/en/publications/the-eib-group-climate-bank-roadmap>.

other independent funding sources of the EU, including from the sale of ETS allowances and CBAM certificates (which fund, amongst other things, the Innovation Fund). Moreover, such revenues should first and foremost be directed towards projects and assets that substantially and significantly contribute to decarbonisation (as also stated in the Innovation Fund's mission statement). National state aid, for instance to help funding projects of common European interest (IPCEIs) that go through a thorough vetting process, should remain possible to support EU funding instruments, subject to what is said out above.

Next to leveraging government funding, the BBR considers the completion of the Capital Markets Union, both for equity and debt capital markets, a crucial tool to ensure the savings of European companies and citizens are invested in Europe rather than overseas, and thereby mobilise private funding for the energy transition from the larger European public directly on the EU's capital markets.

3. More and better physical interconnection – Grids

A physically interconnected, cross-border and open-access grid infrastructure to transport the electrons and molecules forming the energy carriers of the future, is crucial to achieving the transition. It will be important to balance out the need for both electrons and molecules, with a particular investment need arising for grids to transport hydrogen (including its derivatives) and CO₂, and taking into account both local production and imports.³ The large European ports with their industrial clusters and integrated value chains have a key role to play.

Physical grid infrastructure, both upgrading the existing infrastructure for electricity (amongst other things to accommodate increasing amounts of energy from intermittent sources) and natural gas, and developing new backbones (i.e. interconnectors, grids and pipelines) to store and transport some of the new molecules and energy vectors (H₂, NH₄, CO₂, power-to-gas etc.), connecting ports with industry clusters via pipeline corridors, can act as a precursor to broader investment, building and opening up new markets and industries (by allowing a first-mover advantage) that are considered essential to the success of the energy transition (e.g. markets for renewable and low-carbon hydrogen and fuels).

³ The energy transition (driving the demand for new energy carriers), geopolitical as well as economic circumstances (e.g. overcapacity and redundancy in European oil refining) are leading to increased imports into Europe of molecules from across the globe, including crude as well as refined oil products and primary petrochemicals (such as naphtha, ethane, LPG, ethylene and propylene) and their synthetic equivalents (such as SAF), all of which enter Europe through a few large industrial ports. Connecting these ports and clusters to allow those molecules to flow freely across the EU, will be key to completing the internal energy market and unlock the energy transition's full potential.

Hydrogen in particular can be an important lever for reducing the EU's energy dependencies, both as a feedstock and a secondary energy source. However, the production of hydrogen is energy intensive and requires vast amounts of electricity. Provided that sufficient renewable and low carbon electricity is available to produce it (e.g. through offshore P2G capacity), and in addition to imports, renewable and low-carbon hydrogen can be produced locally, in the heart of the industrial basins where it is to be consumed. The possibility to connect to an open-access grid infrastructure for importers and producers as well as off-takers is crucial to unlocking this potential.

It is understood that the Commission envisages the bulk of EU funding in the coming years will be directed towards grid infrastructure. Given the scale of the required investment and the potential network effects, government funding (directly as well as through regulated asset bases of the network owners, reflected in the network tariffs) is well suited to these asset classes, however funding is occurring at too slow a pace.⁴ Regulatory hurdles to cross-border investments and slow permitting procedures must be addressed, including by ensuring that already existing European instruments are appropriately transposed and implemented at all levels (see below). Governments and EU institutions must invest more in communicating the purpose and benefits of these infrastructures to boost public acceptance.

4. More and better virtual interconnection – Markets

The flipside of a more interconnected (grid) infrastructure, are more interconnected and liquid energy markets. It is recognised by market players and governments, including the Commission, that the internal energy market that was created by the liberalisation over the past three decades has worked well, resulting in increased competition, better service levels and lower prices. Subsequent shocks and crises over the past years have, rightfully, caused concerns over the security of Europe's energy supply and market imperfections, causing energy prices for household consumers and companies to rise (with the energy-intensive industries being particularly hard-hit), whilst allowing both producers of renewable power

⁴ Taking into account a 5 to 7-year investment cycle from planning to commissioning of a large network infrastructure project, we are currently just one cycle away from 2030 and four cycles at most from 2050. Investment decisions, which depend on locking in the required funding, must therefore be taken now while, in reality, funding calls are occurring now for eligibility only in 2026 and beyond, generating a clear timing mismatch.

and the oil and gas majors to reap windfall profits.⁵ This has in turn prompted governments and the Commission to take temporary emergency measures⁶ to address those concerns and appease public opinions, including through inframarginal price caps and excess profit taxes. It is understood that the Commission and certain governments are currently considering making some of these measures and mechanisms more permanent.

While certain of these measures (such as the pooling of gas purchases and accelerating the deployment of renewables) are certainly welcome, others (including price caps and taxing windfall profits) should be treated with care. Such measures risk creating further market distortions and, in the medium to long term, disincentivise investment in additional capacity, thereby ultimately exacerbating the issues they are meant to address. The BBR urges European lawmakers to look beyond the various crises, to which measures best support the energy transition and decarbonisation goals in the medium to long term, by maintaining what works well and minimising market disruption. The right price signals can be delivered through various mechanisms, but they should always start from a well-functioning internal energy market. Law and policy makers should continue to walk the path of liberalisation and prioritise the completion of the internal energy market along the various pillars of the Energy Union. Corrections should be targeted and proportional, not going further than what is needed, in accordance with the principles of better regulation set out below. This will be the only way to retain public support.

⁵ While the power price on the spot markets is determined by the most expensive additional unit required to make supply meet demand (marginal pricing), so-called “inframarginal” technologies (i.e. renewables, nuclear and lignite), provide electricity to the grid at a cost below the price level set by the more expensive “marginal” producers, usually gas-fired power plants. As power prices, driven by marginal pricing, have been boosted by sharp rises in the cost of gas, these inframarginal producers have been able to exponentially increase their revenues, while their costs have remained stable or continued to drop as technologies mature, thereby reaping so-called “windfall profits”. This effect is exacerbated by one-directional support schemes such as feed-in tariffs or green certificates, which have often been set at historically high levels for longer periods of time (based on predictions of higher cost and lower market revenue).

⁶ See in particular Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders, OJ L 335, 29.12.2022, p. 1-35; Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, OJ L 335, 29.12.2022, p. 36-44 and Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices, OJ L 335, 29.12.2022, p. 45-60. On 28 November 2023, the Commission has proposed a 12-month extension of all three of these acts (see COM press release available at: https://energy.ec.europa.eu/news/commission-prolongs-energy-emergency-measures-12-months-2023-11-28_en).

The BBR welcomes the Commission’s proposal for a reform of the electricity market design⁷, which strikes the right balance between the level of market intervention and what it tries to address. In particular and amongst other things, it supports the creation of larger bidding zones with matching, longer-term transmission rights, the promotion of forward contracts as a means to hedge against price risk, and the use of (corporate) power purchase agreements (backed by market-based credit support guarantees) as a way to achieving price stability and predictability for privately funded (renewable) power production projects. Two-way contracts for difference (CfDs) should be the preferred tool for allocating government support to new projects, while maintaining investment certainty for projects that are already commissioned under existing schemes. In designing these CfD schemes, governments should nonetheless beware falling into the “produce-and-forget” trap⁸. This risk should be addressed, for instance by capping the amount of (full-load hours for which) subsidies that can be issued per project annually and ensuring volume risk remains with the operators of the assets. An update of the Regulation on market integrity and transparency (REMIT)⁹ is also welcome, provided no unnecessary additional administrative burden is created.

5. Removing barriers to the development of a CO₂ market

Carbon capture usage and/or storage (CCUS) is considered a key solution to decarbonise so-called hard-to-abate sectors, including heavy industries and ETS sectors such as lime, cement and steelmaking. CCUS is also the gateway to local production of low-carbon hydrogen with its many uses for the European industry. Demand for CO₂ will come from clusters with high emissions intensity and will be driven by the availability of a robust and open-access cross-border pipeline infrastructure to transfer the CO₂ to and from these industry clusters (e.g. to turn it into fuel – CCU) and to suitable onshore geological storage locations as well as to the ports to be loaded onto ships for offshore sequestration (CCS). An open and competitive access to such CO₂ sinks will also be paramount. This in time should lead to the creation of a fair and robust internal market for CO₂, which will be the tool of preference to allocate investments across Europe without over-subsidisation (as opposed to loosening state aid rules).

⁷ Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union’s electricity market design, COM/2023/148 final.

⁸ This concerns the risk that when market prices are low, operators will continue to produce, thereby generating unwanted surplus power at the taxpayers’ expense.

⁹ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, OJ L 326, 8.12.2011, p. 1-16.

Consequently, to enable the cross-border transport of CO₂, it is essential to remove intra-EU barriers to waste exports. The key legal tools for this are already available. It concerns (i) the full and adequate transposition (without unnecessary gold-plating) by member states with capture, use and/or storage potential of the CO₂ Directive¹⁰ and (ii) Article 6 of the London Protocol¹¹, as amended. Article 21 of the CO₂ Directive regulates third parties' access to CO₂ transport networks and storage sites and requires member states to ensure, amongst other things, that such access is given in a fair and non-discriminatory manner (on certain conditions and subject to limited exceptions). A 2009 amendment to Article 6 and Annex 1 of the London Protocol enables the export of CO₂ for geological sequestration between treaty parties, subject to those parties entering into an agreement or arrangement setting out, amongst other things, an allocation of permitting responsibilities. This amendment can enter into force only when ratified by at least 36 countries that are a party to the London Protocol. As it stands, 10 countries have so far ratified the amendment.¹² Separately, pursuant to a resolution of 2019¹³, it has become possible for treaty parties to provisionally apply the 2009 amendment prior to its formal ratification by depositing with the International Maritime Organization (IMO), next to their instrument of acceptance, a declaration of provisional application of the 2009 amendment on their territory, and subsequently enter into a bilateral agreement or arrangement as provided for under said 2009 amendment. As it stands, governments of seven treaty parties, of which four EU and one EEA member state, have deposited a declaration of provisional acceptance. Late in 2022, the governments of Belgium and Denmark notified the IMO of the world's first bilateral agreement on CO₂ exports under the 2009 amendment;¹⁴ with the support of the BBR, in July 2023, a memorandum of understanding has been finalised between Belgium and The Netherlands.

Whilst the BBR recognises and welcomes the pioneering role of the Benelux in this respect, it calls upon the Council to encourage all EU member states that are a party to the London Protocol (which is sitting outside the EU's *acquis communautaire*) to

¹⁰ Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006, OJ L 140, 5.06.2009, p. 114-135.

¹¹ For the full text of the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Convention), the 1996 London Protocol and its subsequent amendments, see <https://www.imo.org/en/OurWork/Environment/Pages/London-Convention-Protocol.aspx>.

¹² As per October 2023, according to minutes of the 45th Consultative Meeting of Contracting Parties to the London Convention and the 18th Meeting of Contracting Parties to the London Protocol (LC 45/LP 18) held at the IMO on 2-6 October 2023, available at: [https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/LC-45-LP-18.aspx#:~:text=The%20meetings%20noted%20that%2C%20to,%2C%20Estonia%20\(Febbruary%202019\)%2C](https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/LC-45-LP-18.aspx#:~:text=The%20meetings%20noted%20that%2C%20to,%2C%20Estonia%20(Febbruary%202019)%2C)

¹³ Resolution LP.5(14), 2019.

¹⁴ See footnote No 12.

(i) to ratify the 2009 amendment as soon as possible; and (ii) absent ratification, to deposit a declaration of provisional application and map out and seek to enter into bilateral agreements with other treaty parties to allow for more intra-EU (including offshore) CO₂ exports.¹⁵ The BBR also urges member states, in the absence of clear guidance and examples, to share knowledge, coordinate and align the content of these bilateral agreements with the CO₂ Directive, in order to speed up the process of their being taken up and harmonise as much as possible their application to allow for the effective cross-border transport of CO₂ across the EU.

6. Better regulation

(New) legislation being adopted at European as well as national level should keep its “eye on the prize”, which is to say, the overall (road to) decarbonisation goals rather than attempting at “greening” every single product, service or trade flow as much and as fast as possible, which could potentially hamper technologies such as CCUS, which are an essential step in the transition to a net-zero energy system (see above). Market disruptions resulting from new regulation should be limited to what is needed, proportional to the aim, temporary and harmonised. Overly detailed and prescriptive regulation should be avoided, particularly where it could hamper the development of cutting-edge (including transitional) technologies and/or where a market still needs to form, in which case room should be left for the industry to innovate and regulatory uncertainty should be avoided. The use of delegated acts should be limited to essential technical matters (e.g. the calculation method for lifetime GHG emissions), where it cannot be left to the industry to come up with its own standards. If rules change, exemptions and grandfathering provisions can be considered for projects that are already operational or in the later stages of their development, and which have limited precedent value.

Examples of overly restrictive regulation include the suite of delegated acts relating to the certification of green hydrogen and bio and low-carbon (including recycled carbon) fuels under the Renewable Energy Directive (RED II¹⁶, as amended by RED

¹⁵ Regardless of this and while a generalised application of the 2009 amendment is preferable from a legal certainty point of view, the BBR reiterates and supports the Commission’s earlier interpretation that no legal conflict exists between the London Protocol on the one hand and the CO₂ Directive on the other, and that there would be no obstacle (under Chapter 5 of the CO₂ Directive nor under Article 6 of the London Protocol) preventing a member state which is also a treaty party from exporting CO₂ to another member state which is also a treaty party for sub-seabed geological storage.

¹⁶ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), OJ L 328, 21.12.2018, p. 82-209.

III¹⁷) and the Third Gas Directive¹⁸ (as will be amended by the proposed Gas Decarbonisation Package¹⁹) respectively, and the slow development of harmonised EU standards for eco-friendly and sustainable construction materials (while buildings and the construction sector are recognised as areas with the highest decarbonisation potential). An example of where harmonisation might not go far enough, is the system of tradable guarantees of origin (GoOs) for biomethane, where different member states currently have their own databases and specific types of GoOs, with limited or conditional mutual recognition, and the market for these GoOs could benefit from a more uniform system of GoOs based on the sustainability criteria laid out in RED III, and a union-wide database.

The BBR backs the Commission’s “Better Regulation” agenda and urges both European and national lawmakers to consistently apply these principles as a filter against excessive or inadequate regulation, which could potentially lead to a fragmentation of the single market, instead of deepening it. Crucially, to achieve the EU’s net-zero objectives, emphasis should be placed on creating the right (financial and market) incentives for businesses to invest, rather than designing regulation that may disincentivise or discourage from doing so. In attempting to create an optimum level playing field within the EU, one must be careful not to create one that is unlevel with the rest of the world.

7. Better implementation

Better regulation also requires European harmonisation legislation to better trickle down into the laws and government actions of the member states. In areas where full harmonisation is not achievable or desirable, national authorities of the member states should fully apply and respect the principles of mutual recognition, and avoid so-called “gold-plating” (i.e. applying a more stringent or extensive approach than required when transposing EU law).

A key example concerns permitting. Various legislation already exists at EU level to shorten permitting procedures and cut down red tape, including under RED III (with short-tracking of permitting procedures by no longer requiring an individual

¹⁷ Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, OJ L, 2023/2413, 31.10.2023.

¹⁸ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211, 14.8.2009, p. 94-136.

¹⁹ Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen, COM/2021/803 final. Political agreement on a final text was reached between the European Parliament and the Council on 28 November 2023.

environmental impact assessment for certain projects in predetermined go-to areas) and under the TEN-E Regulation²⁰ (with priority status for certain projects of common interest). Priority should be given to appropriate implementation of these rules into national jurisdictions, rather than more regulation at EU level. Environmental impact assessments for projects that still require it should be done in a more streamlined way, and taking into consideration first-of-a-kind characteristics of a project and its potential contribution to the decarbonisation goals.

Other examples include capacity remuneration mechanisms in the power market, which are required under the Electricity Regulation²¹ to be open to direct and indirect participation by providers from other member states, the application of common rules allocating cross-border transmission capacity and distributing congestion revenues by network operators (i.e. by applying the CACM grid code²²), as well as the uniform application of other technical and operational rules established at European level.²³ The design of capacity remuneration mechanisms (e.g. the type of auction, choice of reliability standard etc.), operational procedures and the ways of contracting grid services must account for this. A full and coordinated implementation of the new Alternative Fuels Infrastructure²⁴ framework, including the linear trajectories towards 2027 member states must incorporate in their National Policy Frameworks (and which must be presented in draft form to the Commission already in 2025), are another good example.

Rather than imposing stricter rules, the BBR calls on member states to prioritise a lean, albeit full implementation of the existing regulatory framework. Sharing of knowledge and best practices between national governments, authorities and regulators is key to achieving this.

* *
*

²⁰ Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013, OJ L 152, 3.6.2022, p. 45-102.

²¹ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 54-124.

²² Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, OJ L 197, 25.7.2015, p. 24-72.

²³ A full overview of all European grid codes established under the Electricity Regulation within the European Network of Transmission System Operators (ENTSO-E) is available here: https://www.entsoe.eu/network_codes.

²⁴ Regulation (EU) 2023/1804 of the European Parliament and of the Council of 13 September 2023 on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU, OJ L 234, 22.9.2023, p. 1-47.