

Legal framework and Instruments for the Decarbonisation of the Industry Sector in Germany

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About the BBH group



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- ▶ approx. 600 staff
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Christine Kliem



Christine Kliem advises on European and German law relating to renewable energy sources with a special focus on the industry and the mobility sector.

- ▶ Born in Berlin in 1988
- ▶ 2008-2013 studies of law in Potsdam
- ▶ 2013-2015 legal traineeship at the Regional Court of Potsdam
- ▶ 2016-2017 Master of Laws (LL.M.) in International Energy and Environmental Law at the University of Aberdeen, Scotland; master thesis on the topic "Renewable energy auctions – Are they effective in order to promote the growth of renewable energy?"
- ▶ Since 2017 lawyer at BBH Berlin
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Outline

1. Approaches for the transformation
2. Policy instruments
3. Key legal aspects

Greenhouse gas emissions in the industry sector can be reduced in several ways

Approaches for the transformation of the industry

- ▶ Use of **green** (fully renewable) **electricity**
 - Example: In addition to classical electric motor applications, all electricity-based heat generators (Power-to-Heat) for instance in steel production or chemical industry
- ▶ Use of **green** or **blue hydrogen**
 - Example: iron ore direct reduction plant in steel production
- ▶ Use of **biomass** (subordinate)
 - Example: paper, cardboard and pulp production
- ▶ Unavoidable process emissions (subordinate): **Capture of CO₂** and **utilization** or permanent **storage** of the CO₂ (CCS/CCU, example: cement/lime production).
- ▶ Use of **natural gas** instead of coal
 - Example: initial use of natural gas in iron ore direct reduction plant

Promotion via Climate protection contracts that take into account CO₂ price and GHG reduction costs



Funding guideline for climate protection contracts

- ▶ Federal Ministry for economic affairs and climate protection has developed a **new funding guideline** for the industry
- ▶ **Subject:**
 - Promotion via climate protection contracts (CCfD) based on the concept of carbon contracts for difference: **Carbon Contracts for Difference (CCfD)**
 - The aim is to compensate for additional costs incurred by companies in energy-intensive industries because they switch their production to processes that can be almost GHG-neutral in the long term
 - This promotion takes into account the additional construction costs for the transformation technologies (**CAPEX**) as well as the additional costs from the operation of these more climate-friendly plants (**OPEX**), which arise in comparison to conventional plants or production processes

The aim of the funding is to accelerate innovations for the transformation of industry

Further funding goals

- ▶ CCfD promotes depending on **CO₂ price**. EU-ETS price signal primarily stimulates **cost-effective emission reduction**
- ▶ Climate protection contracts should:
 - Accelerate investments in fundamentally **new technologies** and
 - prevent **Carbon Leakage**
- ▶ by:
 - cushioning uncertainties regarding the development of the CO₂ price,
 - and reducing abatement costs and investment cost risk by assuming the additional costs.
- ▶ Only production processes that can lead to a reduction in GHG emissions of **95 percent** compared to the reference system are eligible for funding.

Transformative production process:
a production process that is characterized by fundamental technological changes to conventional production processes, i.e., a significant need for investment in new in new technologies that have not yet dominated the market or set the market price, substitutes fossil fuels or raw materials with climate-friendly energy sources or raw materials (e.g., electricity, hydrogen, biomass), or employs technologies for the capture and long-term storage or long-term product binding or recycling of long-term product sequestration or recycling of CO₂.

Draft funding guideline to be put into effect soon

Process status

- ▶ **April 2021:** Key issues paper on the design of climate protection contracts by the German government (pilot program as part of the national hydrogen strategy)
 - The paper is published here: [Eckpunkte Pilotprogramm für Klimaschutzverträge | Download | BMUV](#)
- ▶ **December 2022:** *Draft* of the funding guideline has been published
- ▶ **January 2023:** Consultation with associations, vote in federal government and approval by EU Commission under state aid law
- ▶ **Target:** Funding guideline to come into force **in the first half of 2023**
 - The draft can be downloaded here: [BMWK - Förderrichtlinie Klimaschutzverträge – FRL KSV](#)

Further promotion instruments: other types of climate protection contracts

CfD and Double Auctioning

▶ **Contracts for Difference (CfD):**

- CfD compensate for the differential costs between gray and green products based on market prices.
- Standard example: subsidy for green electricity in the amount of the difference between green generation costs (flat-rate) and the electricity market price.
- Repayment obligation in the event that market price rises above generation costs

▶ **Double auction model (“H2Global”):**

- (long-term) purchase contract between the producer and a central buyer
- (short-term) marketing contract on the demand side
- Based on a mechanism in analogy to the CfD approach, the difference between supply prices and demand prices will be compensated by grants
- First auction launched in 12.2022

The logo for H2Global features the text "H2Global" in a dark blue, sans-serif font. The "2" is stylized with a vertical column of four colored dots (green, blue, light blue, dark blue) positioned between the "2" and the "G".

Further promotion instruments: quota and labelling

▶ Increasing legal obligation to market low-CO₂ products or substances (quota).

- (Theoretical) example: annually increasing quota for green steel.
- Obligation would be penalized
- Precondition: Refinancing of green products via market price
- Carbon leakage problem?

▶ Labelling obligation or labelling option

- Companies must or may declare GHG footprint of a product
- Promotion effect at best indirectly via market pressure
- Unsuitable for introduction of new and very expensive technologies



State support interferes in the market, which is why it is monitored by the EU Commission



Guidelines for State Aid for Climate, Environmental and Energy Protection (KUEBLL)

- ▶ KUEBLL concretize the exception under Art. 107 (3) c) TFEU
- ▶ Subsidies for GHG mitigation are eligible for approval (sec. 4.1 KUEBLL). Contracts for difference are explicitly mentioned as a possible instrument:
 - 121. Aid for decarbonisation can take a variety of forms including upfront grants and contracts for ongoing aid payments such as contracts for difference ⁽⁶⁹⁾. Aid which covers costs mostly linked to operation rather than investment should only be used where the Member State demonstrates that this results in more environmentally-friendly operating decisions.
- ▶ Aid for OPEX only for environmentally friendly operating facilities
- ▶ Selection in the tendering procedure, para. 103 KUEBLL
- ▶ Aid recipient must still be exposed to price fluctuations and market risks (no incentive to sell below marginal cost), para. 123 KUEBLL

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for your attention.

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