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**BDEW Bundesverband  
der Energie- und  
Wasserwirtschaft e.V.  
(German Association of Energy and  
Water Industries)  
BDEW Representation at the EU**

Avenue de Cortenbergh 52  
1000 Brussels  
Belgium

[www.bdeu.de](http://www.bdeu.de)

## Position Paper

# Implementation of the Euro- pean Net-Zero Industry Act (NZIA)

Recommendations by the German energy industry on  
the implementing and delegated acts for Article 26, 29  
and 46

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The German Association of Energy and Water Industries (BDEW), Berlin, represents over 1,900 companies. The range of members stretches from local and communal through regional and up to national and international businesses. It represents around 90 percent of the electricity production, over 60 percent of local and district heating supply, 90 percent of natural gas, over 90 percent of energy grid as well as 80 percent of drinking water extraction as well as around a third of wastewater disposal in Germany.

BDEW is registered in the German lobby register for the representation of interests vis-à-vis the German Bundestag and the Federal Government, as well as in the EU transparency register for the representation of interests vis-à-vis the EU institutions. When representing interests, it follows the recognised Code of Conduct pursuant to the first sentence of Section 5(3), of the German Lobby Register Act, the Code of Conduct attached to the Register of Interest Representatives ([europa.eu](http://europa.eu)) as well as the internal BDEW Compliance Guidelines to ensure its activities are professional and transparent at all times. National register entry: R000888. European register entry: 20457441380-38

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## 1 Introduction and general remarks

BDEW supports the overarching objectives of the Net-Zero Industry Act (NZIA), including the maintenance, expansion, and development of European production capacities, particularly for transformation technologies in the field of renewable energy sources (RES) and energy infrastructure that are critical for the energy transition.

Securing the long-term supply and protection of transformation technologies is essential for a resilient energy system. However, there are currently dangerous dependencies on individual third countries for certain energy transition and digitalisation technologies.<sup>1</sup>

According to BDEW, resilience in this context does not mean import independence, as a complete relocation of the energy industry's sometimes complex supply chains to Europe is neither realistic nor desirable. Instead, we need to work towards strategic sovereignty that enables the EU to reduce its dependence on individual supplier countries and retain or rebuild its own expertise and value creation. To achieve this, must strike a balance between the diversification of supply chains leveraging the advantages of globalisation and the strengthening or rebuilding of domestic industries. This requires an innovation offensive for key technologies and skills, including in the field of hydrogen technologies.

For the NZIA to effectively strengthen European manufacturers of net-zero technologies and create a level playing field, it is necessary to avoid imposing a high bureaucratic burden through numerous complex non-price criteria (NPC). The anticipated increase in bureaucracy contradicts the European Commission's declared aim of speeding up and simplifying procedures. On the contrary, in some cases, the NZIA will reverse national procedural accelerations already achieved, foreseeably leading to longer procedural times and delays in the further expansion of RES.

BDEW therefore urgently suggests addressing existing challenges with a mix of measures, including investment protection programmes, bureaucracy reduction, funding, regulatory adjustments and incentives. The NZIA alone is not enough to create the necessary resilience.

Measures such as the mandatory resilience criteria in public procurement procedures (Article 25) and RES auctions (Article 26) adopted in the NZIA can only offer limited support to domestic industries. At the same time, overburdening public procurement law, already complex

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<sup>1</sup> BDEW discussion paper "[Resilience in the energy industry](#)" (January 2024)

particularly for smaller players. It is crucial to find the right balance between resilience, enabling the expansion of RES and grids, and making the regulations as unbureaucratic as possible to avoid jeopardising the energy transition<sup>2</sup>. This also includes recognising that additional costs for procuring more expensive European products will increase overall energy system costs, which contradicts the goal of reducing energy prices to strengthen competitiveness.

- › **Simplify compliance:** It is imperative to avoid making the verification of compliance with non-price criteria overly complex and bureaucratic. Evidence provision should be limited to realistically verifiable levels of value added, such as upstream production steps. Overly complex designs would counter the EU's objective of reducing bureaucracy.
- › **Long-Term Incentives:** Preserving, expanding or reconstructing production sites for renewable energy technologies within the EU cannot be achieved solely through regulatory measures like the NZIA's resilience criteria. Long-term (financial) incentives and a clear commitment to the EU's 2050 climate neutrality target and the 2030 renewable energy target are essential. This approach is the only way to sustainably build the necessary infrastructure and achieve the Commission's goals of maintaining and developing net-zero technologies within the European Union.
- › **Supportive Measures for Resilience:** Accompanying measures such as investment protection instruments, credit programmes, special depreciation/tax relief, and direct support for the development and expansion of European production capacities - preferably at EU level – are crucial. These measures ensure that achieving resilience is not solely the responsibility of energy companies but is seen as a collective societal task.
- › **Securing Strategic Raw Materials:** There is an urgent need to secure the strategic supply of raw materials by establishing a European supply chain for critical raw materials, especially for batteries. Additionally, setting up recycling programmes for renewable energy technologies is vital to reduce dependence on imports.
- › **Expanding Skilled Labour:** Efforts should be made to expand skilled labour programmes for the development and assembly of renewable energy technologies. This will ensure a skilled workforce capable of supporting the growth and innovation needed for the energy transition.

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<sup>2</sup> BDEW position paper on the ["EU guidelines on the tender design for renewable energies"](#) (March 2024)

The drafts for two implementing acts and one delegated act now submitted by the EU Commission are crucial for the implementation of the NZIA, as they concretise important aspects of the energy transition components concerned and for the further development of the RES auction design:

- › Implementing act specifying the pre-qualification and award criteria for RES auctions (Article 26, paragraph 2) - [Link](#).
- › Implementing act with a list of all end products with Net Zero technologies and their main specific components (Article 29, paragraph 2), which is decisive for the assessment of the contribution to resilience in both public procurement procedures and in RES auctions - [Link](#).
- › Delegated act identifying sub-categories of Net Zero technologies and the specific components used for them (Article 46(7)), which determines which technologies and components fall within the scope of the NZIA - [Link](#).

BDEW comments below on the impact of these three legal acts on the energy industry, taking into account the fact that these two legal acts with the lists of technologies and components are of great relevance not only for RES auctions, but also for the implementation of the requirements for public procurement procedures (Article 25), which from BDEW's point of view affect grid operators in particular.

In order to concretise Article 25, an implementing act to define the minimum requirements for environmental sustainability for procedures for awarding public contracts is also still pending, which BDEW believes should also be presented promptly in order to create clarity for the companies concerned.

## **2 Comments on the legal acts referred to in Articles 26(2), 29(2) and 46(7) NZIA: General remarks**

BDEW emphasises that the requirements in the planned implementing act on pre-qualification for renewable energy auctions will entail greatly varying costs and time expenditure for bidders, depending on the respective technologies. Meeting the required criteria and compiling the corresponding evidence will be significantly more complex for some technologies than others. Therefore, BDEW distinguishes between solar PV, onshore and offshore wind technologies where appropriate. Overall, there is a risk that these requirements will slow down or hinder the expansion of RES in the European Union. While diversifying supply chains for renewable energy components is necessary, the current design of the diversification requirement is impractical.

A country-specific quasi-monopoly exists currently for **solar PV technologies**. Without EU incentives to rebuild competitive production capacity within Europe, BDEW sees no realistic alternative but to continue to rely to a large extent on PV modules from suppliers in the People's Republic of China. If resilience requirements under Article 7 are implemented as pre-qualification criteria, auctions under the NZIA for solar PV sector may see little interest from bidders in the short and medium term. Alternatively, the exceptions set out in Article 26(5) and Article 26(10) (excessively high costs or under-subscription) will become the norm and would merely delay expansion.

European manufacturers and production capacities currently exist in the **onshore and offshore wind** sectors. However, without long-term capacity utilisation of production lines China's market power in Europe will grow. Continuous expansion paths and the establishment of production lines of European manufacturers over at least five to seven years are imperative. Developing supply chains for critical raw materials and production lines, along with incentive and investment protection instruments, must align with climate protection targets expansion paths for RES. For countries like Germany, it is unclear how the increasing number of new wind energy projects as well as a combination of offshore wind energy and electrolysis will be covered by European manufacturers in the medium term. The development and implementation of offshore electrolyzers must be supported by an appropriate regulatory framework that enables combined connection concepts with the electricity grid and hydrogen pipelines, as well as targeted funding programmes.

## **2.1 Consultation on transposition into national law crucial**

Some of the current drafts are still very general in nature, meaning that a new in-depth assessment and commentary will be necessary when the requirements are translated into specific national directives and implementation measures. It will then be crucial that market and technology-specific criteria and framework conditions are taken into account that consider the special features and requirements of the local energy industry. This is the only way to ensure that regulation has a targeted effect and does not lead to unintended side effects. Comparability with the implementation of other European countries will be a key aspect of the national design in order to avoid distortions within the economic union.

## **2.2 Lack of contribution to reducing bureaucracy**

In its Competitiveness Compass and work programme, the European Commission identified reducing bureaucracy and enhancing competitiveness as key priorities of this legislative period. The goal is to create a clear, simple and intelligent regulatory framework for companies drastically reducing administrative, regulatory and reporting obligations, especially for SMEs.

Given this context, the requirements of the planned implementing act to specify the pre-qualification and award criteria RES auctions should be reviewed and **reduced to the necessary minimum**. Reducing bureaucracy in one area while creating new (bureaucratic) requirements elsewhere is counterproductive

The proposed criteria, along with the necessary documentation, reports, regular reviews and highly standardised audits by authorities, impose a significant bureaucratic burden on project developers and grid operators. This could reduce the number of bidders and lead to more legal disputes over compliance with NPC, delaying the RES expansion and grid modernisation. The result is higher costs for suppliers, bidders and auctioning bodies, ultimately borne by electricity consumers. **This harms the EU's competitiveness instead of strengthening**, jeopardises social acceptance of the energy transition, and contradicts the Commission's goals of reducing energy prices and ensuring affordable energy as part of the Clean Industrial Deal.

### **3 Specific comments on the three legal acts**

The following assessment follows the structure of the act under Article 26(2) NZIA (implementing act specifying the pre-qualification and award criteria for RES auctions). However, some comments also refer to the acts under Article 29(2) and Article 46(7) NZIA, as these are closely linked to the act under Article 26(2).

#### **3.1 Implementing Act for Article 26 NZIA: Article 4 ("*Responsible business conduct*")**

BDEW supports the introduction of pre-qualification criteria in future RES auctions that relate to responsible business conduct. As recommended by the European Commission, the requirements for Article 4 should be based on existing legal requirements or national or European codes of conduct for responsible business practices.

To avoid double reporting, companies that already publish CSRD-compliant sustainability reports as part of their management report should be exempt from further obligations to provide evidence of responsible corporate behaviour. This should also be clarified in Article 4 in analogy to Article 16 (3).

#### **3.2 Implementing Act for Article 26 NZIA: Article 5.1 ("*Cybersecurity and data security*")**

BDEW generally supports the introduction of pre-qualification criteria regarding cyber and data security for RES auctions. It is crucial that existing legal requirements from the Cyber Resilience Act and national regulations are applied. To ensure standardisation minimise bureaucracy, it is essential to avoid creating new standards that do not enhance security.



**Certification and Transitional Periods:** Ideally, the contracted service provider should already have relevant certifications, for example in accordance with such as **ISO standard 27001**. In this case, the service provider could easily pass on the corresponding proof to the bidder. However, the market is not fully penetrated by this certification and not all service providers have completed the relevant certification yet. Therefore, to avoid short-term bottlenecks, a sufficient transitional period for certification be provided if necessary.

**Service Provider Audits:** There is also the option of conducting a separate service provider audit. This could also be used to prove whether the respective provider fully fulfils the cybersecurity requirements. Bidders should be able to use so-called *Cybersecurity Risk Assessments* (CRA) to demonstrate fulfilment of cybersecurity standards for their contracted service providers.

### Photovoltaics

The planned requirements are extensive and demanding. Especially when new, specialised project companies are founded to implement a solar PV project, such comprehensive cyber security planning may not be financially viable, thereby potentially hindering the RES expansion. Additionally, it is unclear whether PV inverters are considered ICT products and if manufacturers of inverters can fulfil the data storage requirements.

### Onshore and offshore wind energy

BDEW generally welcomes the mandatory pre-qualification criterion, highlighting the importance of cybersecurity risk management for wind turbines, which must be continuously reviewed, evaluated and updated.

However, it is questionable whether the bidders are the appropriate targets of these measures, as they have limited influence over the technical turbine equipment, especially in the onshore sector. Manufacturers could ensure technical options for cybersecurity are met, but this this must be done without excessive bureaucracy.

**Data Localisation Requirements:** BDEW believes that data localisation requirements (Article 5b) are too stringent, as they mandate that data used or generated must be stored within the European Economic Area (EEA) and not be transferred outside. This requirement should be revised to allow data storage and transfer to jurisdictions that comply with European GDPR and international cybersecurity standards. Companies should be able to prove compliance, and European authorities should regularly verify adherence to these standards.

### **3.3 Implementing Act for Article 26 NZIA: Article 6.1 (e) ("*Ability to deliver the project fully and on time*")**

The requirement for bidders to provide comprehensive information on service providers, suppliers and other contractual partners before the auction is impractical and cannot be implemented in practice – at least not in total

Detailed project planning can only commence after the bid is awarded. Given the current volatile market and the ongoing supply chain bottlenecks for renewable energy components, it is nearly impossible for bidders to finalise all relevant contractual partners and provide comprehensive evidence of their capabilities before the award. Such extensive preliminary work will deter many potential market participants from bidding or entering the market, indirectly reducing the diversity in the European market. Additionally, evaluating these criteria by the competent authorities will either not be feasible or only to a very limited extent, especially for the numerous projects in the onshore wind and PV sectors.

**Selective application of requirements:** It should be clarified that the catalogue of seven requirements is not to be applied cumulatively. Member States should select the requirements that best suit the respective technology and auction design. There should also be explicit provisions for the possibility of continuing existing and effective national practices to fulfil the requirements of Article 6. It is crucial to avoid imposing requirements that can only be met after the auction.

**Avoid barriers to entry:** To prevent consider bidders' experience at European level for every technology – including Norway and the United Kingdom – and not just within the respective Member State (cf. para. 1 (f)).

### **3.4 Implementing Act for Article 26 NZIA: Article 7 ("*Resilience contribution*")**

**Clarifying the time frame for the resilience assessment:** BDEW advocates for a clear time frame within which the Commission calculates and publishes the proportion of net zero technologies originating from third countries. A well-defined schedule for the regularity, duration and consistency of the assessments is essential to provide planning certainty for all bidders and the supply chains. This clarity will enable bidders to design their bids based on the applicable requirements reliably. Given that auctions take place regularly and are prepared accordingly, knowing that the NZIA resilience criteria will be adjusted every two years at the beginning of the year, for example, would ensure a non-discriminatory solution with maximum planning security for all parties involved. It is also crucial to clarify the status of auctions that were conducted before a "new" assessment is published by the Commission. These auctions carried out under different conditions if the evaluation, should adhere to the "old" values to

avoid the need for regular auctions based on new criteria, which could cause significant delays, additional work, and cost.

**Reporting requirements and legal risk:** The planned requirements for reporting the exact origin of component parts pose a high potential for legal action delays. It is foreseeable that providing the required data on time and in necessary detail may not always be possible. If bidders do not have this information promptly, they will lack the basis for preparing a suitable and compliant auction, inevitably leading to complaints and legal disputes.

**Supply chain bottlenecks:** If EU manufacturers of net-zero technologies do not expand their production capacities quickly enough, supply bottlenecks could delay the RES expansion. The strategic development of European supply chains requires long-term investment security, which cannot be achieved solely through resilience. A European investment offensive, supported by European funding and hedging instruments, is needed for long-term security. It remains unclear what the consequences will be if bidders or manufacturers cannot maintain or deliver compliant turbines after a few years when the final investment decision is made.

#### Photovoltaics:

BDEW highlights that the requirements under Article 7 for solar PV technologies assume a diversified supply chain, which is not met in the current market situation. Therefore, the restrictions in Article 7 threaten to severely hamper the expansion of solar PV in the EU.

#### Wind onshore and offshore:

While European production capacities for main components and wind turbines as a whole are strong, there is a high dependency on China for permanent magnets, which are categorised as main components in the NZIA. Dependencies for other wind energy components are currently also increasing, particularly with regard to the capacity utilisation of European production lines and due to the cost, financing and liability advantages of Chinese manufacturers.

The resilience criterion pursuant to Art. 7 No. 3, combined with Nos. 1 and 2 would severely restrict the use of permanent magnets from China, limiting participation in auctions due to a lack of alternative suppliers. Additionally, this could lead to significant price increases for turbine components due to a lack of international competition, affecting bid and electricity prices and undermining the EU's plan to reduce electricity prices.

In general terms, the provisions of Art. 7 are too complex and open to different interpretations, severely restricting flexibility for bidders and manufacturers. Combining components from different manufacturers in a single project complicates purchasing, logistics, commissioning, and operation, making them more difficult and expensive.

BDEW urges the European Commission to define clearer, more standardised, less complex and more robust requirements for all renewable energy technologies:

- › Introduce a phased approach over time that allows the industry to adapt and avoid bottlenecks
- › Avoid the problematic mix of component deliveries within a project, allowing flexibility in procurement between component categories
- › Ensure most flexibility lies with the developer, who makes the final decision on the origin of component categories, in view of the high-level requirements at technology level or for the sum of the dependent component categories.
- › Either delete the China-specific requirements under Article 7.3 or make them more flexible and less complex in interaction with Articles 7.1 and 7.2.

Other net zero technologies: The requirements under Article 7 (f) also call for a diversified supply chain for some net-zero technologies. However, dependencies on China are particularly high in battery production, and alternative sources of supply are not expected to be sufficiently available in the foreseeable future.

### **3.5 Implementing Act for Article 26 NZIA: Article 8 ("*Environmental sustainability - carbon footprint*")**

#### **3.5.1 Article 8.2 - Calculation of the CO<sub>2</sub> footprint**

**Cost and bureaucratic burden:** This approach risks passing associated costs onto projects, making them disproportionately more expensive and creating excessive bureaucratic burdens. Recalculating the carbon footprint for each individual project is unreasonable due to the effort involved and should not be expected of bidders in elimination rounds. Bidders lack the expertise, resources and necessary information, such as details from the manufacturing processes of the installations.

BDEW therefore believes that Art. 8.2 should either be deleted entirely or adjusted as follows:

- › **Assessment method:** Examine the extent to which the Product Environmental Footprint (PEF) could be used to avoid delays and unnecessary complexity.
- › **Step-by-Step approach:** Consider introducing a phased approach, including the following steps: Until a technology-specific and operationalised methodology with sufficient data quality is available and codified for a fully harmonised application, bidders should only be required to create transparency in their choice and application of the methodology and

the calculated carbon footprint should apply. Once a harmonised methodology is available, define and implement technology-specific thresholds based on a harmonised and tested methodology per technology.

- › **Electricity mix:** Irrespective of the method used, an individual electricity mix based on emissions from individual factories and transport should apply.
- › **Clarification on timing:** Clarify the exact point in time to which the requirement for the latest calculation method refers, the consequences if calculation methods change between bid submission, FID and COD, and what happens if actual data in operation differs from that in the bid.

### 3.5.2 Article 8.3 - Calculation of the product environmental footprint category

**Limited number of providers:** BDEW highlights that there are only a limited number of providers on the market for most renewable energy technologies. It is questionable whether there are significant differences in the ecological footprint between these providers to justify project-specific calculation and certification. Suppliers should be required to conduct standardised life cycle analyses (LCA) for their products. This would establish an industry-wide reference standard, similar to the [depreciation table](#) (AfA), for example. Such an approach would benefit individual project planners by eliminating the need for complex footprint calculations for each project. Instead, they could rely on available Manufacturers should provide evidence in a generalised form for individual system types, rather than detailed project aspects.

**Tracking carbon footprint:** Tracking a product's carbon footprint down the supply chain will incur costs, leading to corresponding price increases being passed on to consumers. As a result, future price increases can be expected, which could partially undermine the EU 's goal of reducing electricity prices.

### 3.6 Implementing Act for Article 26 NZIA: Article 9.1 ("*Environmental sustainability - circular economy*")

**Recyclability examination:** BDEW does not consider the examination of recyclability to be practical. Recycling efforts are typically focussed on specific products or components. For example, in electronics, a decision must be made in advance about whether to recycle gold or rare earth elements contained in the components.

**Bureaucratic and financial burden:** Providing proof of compliance with circular economy imposes bureaucratic and financial burdens. This will likely have an impact on the electricity price, undermining the EU 's goal of reducing electricity prices.

**Uncertainty about recyclability:** The final extent of recyclability can only be determined after a plant has been decommissioned. It is impossible to estimate today how recyclable a plant will be in 20 years or more, making this criterion highly speculative. If a circular economy criterion is included in the auction design, the parameters should be as transparent and standardised as possible at the EU level.

### **3.7 Implementing Act for Article 26 NZIA: Article 10 ("*Environmental sustainability - biodiversity impact*")**

#### **3.7.1 Article 10.1 - Assessment of impacts on biodiversity**

In BDEW's view the criterion on biodiversity impact should be deleted. It does not make a substantial contribution to strengthening the resilience of energy systems. Instead, the focus should be on strengthening security of supply and building production capacities in Europe.

##### Photovoltaics:

BDEW believes it is impractical for each bidder to conduct a complex feasibility study with a comprehensive biodiversity analysis separately in advance. This would lead to significant additional work for the market participants and increasing annoyance among affected residents. Instead, the assessment of biodiversity impact should be a binding condition when the project areas are designated. Responsible authorities should thoroughly examine the potential impact on biodiversity at the land designation stage and define corresponding conditions. This approach creates a uniform standard for all bidders, allowing them to reschedule projects if negative impacts are identified and avoid participating in an auction. This prevents the risk of projects progressing to the auction stage only to be stopped by the national regulatory authority (in Germany BNetzA) due to a lack of pre-qualification. If the biodiversity criterion assessment depends on the bidder, it should be bidder-related rather than project-related, to offer maximum flexibility across projects in achieving a positive biodiversity impact.

##### Wind onshore and offshore:

Article 10 "Environmental sustainability - biodiversity impact" should be deleted to avoid duplicate nature conservation requirements in the authorisation procedure. Alternatively, fulfilling national environmental and species protection requirements as part of pre-qualification should be sufficient for participation. Compensatory measures for species and nature conservation are already examined and implemented, if necessary, during the authorisation procedure. Making Art. 10 a qualitative criterion would counteract progress in accelerating nature and species protection in authorisation law. With RED III, the EU has rightly provided simplified procedures for designating areas and environmental impact assessments to streamline

land use designations and speed up authorisation procedures. The regulations in Article 10 achieve the opposite.

### 3.7.2 Article 10.2 – Introduction of a monitoring and recording system

**Clarification of monitoring:** BDEW calls for clarification of what is meant by "monitor" in Article 10.2 a), which states:

*"(a) the presence of a system to monitor the positive and negative biodiversity impacts of the installation during the installation, operation and decommissioning phase."*

It is questionable whether permanent measurement of specific parameters should be carried out for wind turbines or PV systems. BDEW highlights the potential impact of high metering costs on the economic viability of renewable energy projects.

**Rely on existing requirements:** The current authorisation law for wind turbines in Germany already includes numerous requirements, making additional requirements under Art. 10.2 unnecessary. These existing requirements include nacelle monitoring for bats and shutdowns during agricultural mowing events.

**Implementation challenges:** Permanent monitoring would not be covered by the current national Immission Control Act (BImSchG) and could not be implemented under the existing system. By law, authorities have the option to issue so-called subsequent orders after the BImSchG permit has been issued if it is determined that the general public or the neighbourhood is not sufficiently protected against harmful environmental impacts or other hazards, significant disadvantages or significant nuisances.

## 3.8 Implementing Act for Article 26 NZIA: Article 11 ("*Environmental sustainability - energy efficiency*")

### Photovoltaics:

To ensure efficient regulation and avoid duplicate regulations, BDEW advocates prioritising the development of ESPR requirements for PV systems before developing RES auction criteria. This approach allows later ESPR requirements to be adopted for the auction criteria, ensuring that RES auction criteria should do not impose requirements beyond the ESPR framework. BDEW believes it is impractical to exclude installations from RES auctions that may be traded on the EU internal market once they fulfil extensive ESPR efficiency and sustainability criteria. Additionally, BDEW supports considering the energy efficiency of the entire project (i.e. the overall system) rather than the efficiency of individual parts. This approach should also apply to onshore and offshore wind technologies.

### **3.9 Implementing Act for Article 26 NZIA: Article 12 ("*Environmental sustainability - efficient water use and solutions avoiding water pollution*")**

BDEW recommends refraining from referring to the requirements of the overall Water Framework Directive at this point. Instead, it should be stipulated that, in consultation with the water supplier concerned, a best practice approach - e.g. taking into account standards and checklists agreed between the sectors - is selected that takes into account the local particularities with regard to water protection. For example, the BDEW has already presented such a checklist together with users of electrolysers and the water industry to take into account water protection for the construction and use of electrolysers (see [BDEW handout Site assessment of industrial sites for hydrogen production: Water-related aspects of a connection to the regional or local water infrastructure](#)).

### **3.10 Implementing Act for Article 26 NZIA: Article 15 ("*Sustainability contribution – Energy system integration*")**

#### **3.10.1 Article 15.3 – site-related influence of the RES project**

BDEW questions why bidders should be expected to know the system requirements in detail during the pre-qualification phase. The assessment of a project's impact on the electricity grid is the responsibility of the responsible grid operator. All concerns regarding grid integration should therefore be addressed by the grid operator

**Focus on basic technical requirements:** Bidders should only need to fulfil the basic technical requirements and specifications for their project and promptly provide all necessary documents for the grid connection request to be processed quickly. Detailed knowledge of the system requirements should not be mandatory in the pre-qualification phase. Instead, the grid operator, as the expert in grid issues, should assess the project's impact on the electricity grid and make any necessary adjustments or upgrades. This ensures smooth grid integration without burdening bidders with additional requirements. The implementation of the NZIA must also prevent additional bureaucratic burdens on grid operators. Grid connection projects in Germany are already delayed due to excessive bureaucratic requirements, as well as shortages of skilled labour and materials.

BDEW advocates either deleting Art. 15.3 in its entirety adapting it as follows:

- › **Advance assessment:** Article 15 should explicitly require Member States to assess system needs and impacts in advance, including whether system needs can be addressed more



efficiently through general market or system incentives, rather than linking requirements to specific projects.

- › **Selective application:** The three dimensions in Art. 15 should not be applied cumulatively, but alternatively depending on the identified system requirements.
- › **Definition of 'temporal flexibility':** Adapt the definition of 'temporal flexibility' to mean the ability of market participants to adjust the generation of active or reactive power, grid feed-in and consumption patterns to contribute to system demand in the relevant time periods, generally by responding to signals from the market or a TSO, in particular in the electricity sector.
- › **Definition of 'locational impact':** Adapt the definition of "locational impact" to mean the ability of market participants to contribute to meeting the needs of the electricity system and supporting system stability based on the choice of location and grid connection point.

### 3.10.2 Article 15.4 – Combinability

While the possibilities for utilising renewable energy systems seem almost unlimited, a certain amount of focus is required to ensure planning security. It would be sensible to specifically inquire whether the connection of battery storage systems or the realisation of electrolysis plants would be technically possible at the respective locations, for example.

Furthermore, BDEW highlights that in Germany, the conditions for grid connection are already comprehensively regulated by the Renewable Energy Sources Act (EEG) and the Energy Industry Act (EnWG). These regulations must be fulfilled for the construction and operation of wind turbines.

BDEW questions the usefulness of combinability as an NPC. Generally, economic conditions determine whether a combined project is realised or not. Proving the theoretical technical connection does not offer any advantages.

### 3.11 Article 16 (*“Assessment of the auctions’ pre-qualification or award criteria and compliance aspects”*)

BDEW is calling for clarification regarding the deadline within which a revised cybersecurity plan must be drawn up. The revision cycle should be based on existing regulations and standards so that no additional effort is required.

#### 3.11.1 Article 16.5

**Customs documents:** BDEW finds it problematic that proof of customs documents is required as part of pre-qualification. This requirement is impractical because RES projects are typically

planned before the actual procurement of the components, which takes place after the authorisation notice is issued. Only then can the relevant customs documents be provided. Therefore, it is unrealistic to submit these documents during the pre-qualification phase. Additionally, it is questionable whether the country of origin of the components is clearly identified in the customs documents, making it even more challenging to fulfil this requirement. BDEW believes such requirements could deter potential bidders from participating in auctions

**Guarantee level:** When determining the level of the guarantees referred to in paragraph 7, the competent authorities shall consider several factors, including project costs, associated risks, project capacity and the value of this capacity for the energy system as a whole. The maturity of the technology used, the degree of innovation required for the auction and other relevant market conditions are also included in the calculation. It is crucial that the required guarantee level is set sufficiently high to prevent bidding strategies aimed at non-compliance with non-price criteria. This ensures that competitors honour their commitments and maintains integrity of the auctioning process.

### 3.12 Article 17 (“Penalties”)

With regard to determining the level of penalties, the "degree of control" by the bidder should also be explicitly added as an aspect to be taken into account. A “force majeure”-clause should be considered. The conditions should be clearly defined in order to limit the risk of speculative behaviour.

## 4 Specific comments on the legal act based on Article 29(2) NZIA

The increased requirements for resilience criteria in the procurement process and auctioning processes, considering the limited market selection and insufficient production capacities in the EU, will inevitably lead to rising product prices and unavailability. This will further reduce the number of potential manufacturers, not only in the area of renewable energy technologies, but also for grid infrastructure technologies. This is because the Implementing Regulation under Article 29(2) will also be relevant for grid operators carrying out projects under public contract (Article 25 NZIA).

**Risks to grid expansion:** Distribution system operators (DSO) and transmission system operators (TSO) across Europe are expanding their grid infrastructure to achieve the EU climate target for 2030. Unavailable products, limited choice and long delivery times pose significant risks to grid infrastructure expansion projects, potentially slowing them down or even stopping them altogether. This is already a problem today, with waiting times of 2 to 4 years for transformers being quite common. In many regions, grid expansion is a mandatory prerequisite for connecting additional renewable energy capacities. If grid expansion is delayed, the

RES expansion will come to a standstill, jeopardising the "secure and sustainable energy supply" envisaged by the Commission.

**Need for balanced legislation:** It is urgently necessary to ensure that new legislation does not further extend the time needed to realise projects. If the resilience criterion is too ambitiously, it will further restrict the already small number of suppliers that can fulfil the high technical specifications. This will reduce the choice of products, potentially resulting in longer delivery times, unavailability of important components, and higher prices. This, in turn, jeopardises the necessary grid expansion and acceptance of the energy transition. Therefore, when designing the resilience criteria and lists of key components, a balance must be struck to ensure procurement is possible at reasonable conditions while achieving independence from individual supplier countries.

**Smart meters and resilience criteria:** In addition to products and components directly part of the grid infrastructure, smart meters are listed as end products in the "Electricity grid technologies" annex to the Implementing Regulation in accordance with Article 29(2) NZIA, meaning that the resilience criterion is to be applied to these products as well. BDEW points out that the smart meter rollout in Germany is lagging far behind expectations. Enforcing the resilience criterion for smart meters will further worsen the situation, as prices for smart meter components are expected to continue to rise and delivery times to be extended if procurement from today's leading manufacturing countries is restricted. This will further delay the digitalisation of energy grids, preventing the implementation of strategic grid management functions such as monitoring and stabilising the grid as well as using flexibility to increase the efficiency of grid usage.

## Contact

Asma Rharmaoui-Claquin  
Generation and System Integration  
+49 30 300 199-1318  
[asma.rharmaoui-claquin@bdew.de](mailto:asma.rharmaoui-claquin@bdew.de)

Moritz Petersen  
EU Representation  
+32 2 774-5115  
[moritz.petersen@bdew.de](mailto:moritz.petersen@bdew.de)

Benjamin Düvel  
Energy Networks and European Regulation  
Management  
+49 30 300 199-1112  
[benjamin.duevel@bdew.de](mailto:benjamin.duevel@bdew.de)

Yulia Aleshchenkova  
Strategy & Politics  
+49 30 300 199-1060  
[yulia.aleshchenkova@bdew.de](mailto:yulia.aleshchenkova@bdew.de)