

Research Center for European
Analysis and Policy

Luiss Hub for New Industrial Policy
& Economic Governance



From Crisis Response to Crisis Governance

A Permanent Framework for Operating Aid in EU State Aid Policy

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LUHNIP Working Paper Series 2/2026

October 1, 2026

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Executive summary

Over the last years, geopolitical events such as the Covid crisis, the Russo-Ukrainian War, and the closure of the Strait of Hormuz combined with a global rise of protectionism and instability have put the European industrial sector under high competitive pressure. As a reaction, the European Commission's Directorate-General for Competition (DG Competition) has adopted five state aid frameworks since 2020. This policy brief shows that alongside investment aid, DG Competition has increasingly allowed member states to use operating aid by raising maximum aid intensity and broadening the sectoral scope throughout the frameworks. This is highly concerning, since operating aid is an expensive policy tool with potentially high distorting effects on the single market and questionable long-term effectiveness. Against this backdrop, this policy brief proposes a new permanent state aid framework for operating aid. This framework is built around two conditions that apply at the sectoral level. The first condition guarantees that operating aid is limited to strategic industries, while the second condition requires that such industries only receive operating aid when they are under acute threat of permanent loss of productive capacity due to an external crisis. Furthermore, to prevent waste of government money and to protect the single market the proposed framework includes safeguards such as time limits and clawback mechanisms.

1. INTRODUCTION

In Europe, industrial policy followed three broad phases. First, during the interventionist period (1950s-1980s), European governments used industrial policy and state aid to protect and nurture national champions. In this phase governments used vertical aid (promoting certain industries or individual firms) and horizontal aid (improving general conditions for economic growth such as investing in education and infrastructure). Following European market integration and the ideological shift towards neoliberalism from the 1980s throughout the 2010s, state aid policy was strictly prohibited and oversight was delegated to the EU Commission, leaving governments only with horizontal industrial policy (Bulfone, 2023). Since the 2010s, a new paradigm, the industrial network state has emerged under which governments have four functions: brokering (establishing networks between firms and science), facilitation (setting standards and similar regulation), protection (using tariff and regulatory barriers to protect industries), and for this policy brief most importantly: targeted resourcing, i.e. providing resources to promising industries (Di Carlo & Schmitz, 2023). To do this, the government can make use of investment aid or operating aid. Since the EU does not have a budget to apply a pan European state aid programme, member states rely on their self-financed state aid programmes. In the last years, DG competition has moved away from the strict general prohibition of state aid for industrial policy. (Di Carlo & Schmitz, 2023).

2. METHODOLOGY AND EVALUATION CRITERIA

2.1 Definition of operating aid

Operating aid refers to government support that is dependent on firm output. There are two forms of operating aid. In its simplest form operating aid implies that governments pay firms a certain amount of state aid per unit of output. However, operating aid is usually used to cover parts of the operating costs of firms, for example industrial electricity subsidies (IESs) that cover electricity costs. These two types of operating aid differ from investment aid, where government support is linked to capital investment in R&D or physical capital like manufacturing capacity.

2.2 Why operating aid can be justified

The core argument for why operating aid can be necessary is based on work by Paul Krugman and Richard Baldwin (1989). They showed that during a phase of high valuation of the US Dollar, certain industrial sectors in the US became uncompetitive and shut down production capacity. After the dollar devaluated again, these industries, even though economic circumstances resembled original circumstances, did not return to original levels. This is because US-based firms have abandoned markets altogether or foreign firms have entered markets that have previously been dominated by US firms. This logic - the hysteresis argument - can be extended beyond the exchange rate context to other crises in which certain sectors become uncompetitive and exit indefinitely. More recent examples could be unfair competition from third countries threatening the viability of European sectors, leading to their permanent loss. High energy prices following the start of the Russo-Ukrainian War are another application for the hysteresis argument. Operating aid can be a solution to cover the crisis phase during which companies might otherwise exit the market and prevent permanent loss of these industries.

2.3 The defensive character of operating aid

When assessing the compatibility of a state aid programme with EU law and market principles, DG competition usually performs a two-fold test, where the first condition is that the state aid programme creates new economic activity. While investment aid usually creates new economic activity, this is not the case for operating aid. When operating aid is used to equalise rising energy costs, companies are not incentivised to invest in new capital and increase their activity but these companies are simply incentivised to not stop production. Increased economic activity is even less likely when the operating aid programme is time limited and operating costs are not expected to naturally decrease to a level at which production without state aid would be viable. Therefore, the honest condition for operating aid would be ‘preventing the loss of important current economic activity’ rather than ‘creating new economic activity’. This reformulated condition shows that operating aid is structurally a defensive instrument that can be used to retain industries but not build up or develop new industries.

2.4 The Exception: When Operating aid creates new economic activity

One case in which operating aid creates incentives for investment and thus increases economic activity is when future demand and revenues are unclear and investments very large. Particularly for the green transition, large investments with long run-up phases are needed. Since future energy prices and demand for green energy is uncertain, market-based investment might be sub optimally low. Therefore, government intervention can enhance the green transition. One tool governments can use is operating aid, as in the form of price guarantees or ‘strike prices’. With such rules the government guarantees minimum prices at which energy producers can sell their green energy. One important case was the Hinkley Point C power plant which receives operating aid in the form of price guarantees by the UK government. Another sector where operating aid is not purely defensive could, for example, be the European raw materials sector. Currently, mining and refining of raw materials is concentrated almost exclusively in China. Even though the EU is a large importer of these raw materials and wants to establish autonomy in this sector, it has not developed a supply chain. This is because new mining and refining sites require billions in capital investment and up to 15 years until they fully function. In this area operating aid could be used to support the creation of a raw materials supply chain (Hintermayer & Hmaidi, 2025).

However, besides such exceptions, operating aid is generally a defensive instrument that does not really create new economic activity but merely retains existing capacity, while investment aid, since being bound to actual investment, creates new economic activity.

2.5 Distortive Effects of Operating Aid

In the EU context operating aid has distortive effects on two levels. First, similar to investment aid, operating aid distorts competition along member state borders. The main problem is that some large member states have higher financial capacity and can afford higher subsidies that attract investment. In the case of operating aid, the effect could be even more direct than for investment aid. Member states with higher fiscal capacity can afford higher direct subsidies, and beneficiaries can undersell competitors from other member states not because of merit but because of higher subsidy levels. This can lead to subsidy races between member states. Thus, operating aid can lead to the fragmentation of the European single market’s level playing field. Secondly, operating aid distorts competition at the firm level. If governments pick certain sectors or companies for direct support (winner picking, or ‘building champions’), these companies have an advantage against their competitors. This can lead to market distortion and the entrenchment of incumbents. Furthermore, the continuous usage of operating aid prevents the exit of unviable firms, i.e. the Schumpeterian creative destruction. Therefore, ongoing and intensive usage of operating aid likely reduces consumer welfare and market efficiency. In the long term it

can also lead to lower global competitiveness. Finally, without clear boundaries and purpose, operating aid can be an extremely wasteful usage of taxpayers' money.

3. LEGAL BACKGROUND

Based on the Treaty on the Functioning of the European Union (TFEU), Article 107, all state aid is forbidden. However, the treaty includes two main routes under which state aid may still be allowed. Firstly, 107(3)(b) TFEU regulates state aid that addresses serious economic disturbance. Secondly, under 107(3)(c) TFEU, aid that does not adversely affect trading conditions contrary to the common interest can also be allowed. Most state aid frameworks are built on 107(3)(c) TFEU or 107(3)(b) TFEU.

When assessing the compatibility of state aid programmes with TFEU regulation, DG competition usually performs a twofold test. Under TFEU 107 (3) (c) the positive condition for applicability of state aid is that it creates new economic activity. The negative condition is that the state aid must not significantly and negatively affect the level playing field of the single market. Since operating aid in its pure form is not connected with investment, it generally does not fulfil the positive condition. Furthermore, the European Commission (EC) has often emphasised the dangerous and particularly distorting effects of operating aid on the single market (European Commission, 2025). Therefore, in most cases, operating aid does not fulfil the negative condition.

A key ruling that paved the way for the liberalisation of operating aid was the 2020 Republic of Austria v European Commission in which Austria challenged the EC's decision to allow UK state aid for the construction and also the operation of a new nuclear power plant (Hinkley Point C). The most controversial part of the Hinkley point C state aid is that it included guaranteed 'strike prices' for up to 35 years which equals operating aid. The Court of Justice of the European Union ruled that operating aid is legitimate if investment would not have taken place without operating aid. Furthermore, there is no direct need for a market failure in the classic sense (Court of Justice of the European Union, 2020). While operating aid has generally been regarded as not fulfilling the positive condition, this ruling showed that operating aid schemes can in principle fulfil the positive condition. Overall, this ruling legitimised operating aid in the form of strike prices, i.e. operating aid for the roll out of renewable energy, and is strongly mirrored in the CISAF framework.

4. BACKGROUND: OPERATING AID UNDER STATE AID FRAMEWORKS

Since 2020 DG Competition has adopted five state aid frameworks. Except the Covid TF, all of these included some form of operating aid.

4.1 Covid Temporary Framework

In March 2020 the EC adopted its first temporary state aid framework (TF), the Covid Temporary Framework on the legal basis of TFEU 107 (3) (b). This framework included investment aid, direct grants and liquidity support which could be used in similar ways as operating aid. The aim of this framework was mainly providing liquidity for companies hit by the ongoing Covid crisis. Crucially, it did not include direct price support schemes or other forms of operating aid.

4.2 Ukraine Temporary Framework

As a reaction to the Russian invasion of Ukraine and the resulting energy crisis, DG competition adopted the Ukraine TF on the legal basis of TFEU 107 3 (b). For the first time, DG competition directly allowed operating aid, which is interestingly only a few months after the ECJ's ruling on the usage of operating aid in the Hinkley Point C case. As a baseline, operating aid covering up to 30% of price increases related to the war was allowed, with an absolute cap at €2 million. For energy intensive firms the maximum intensity aid was 50% with an absolute cap at €25 million. A third very selected and small group of high energy intensive firms were eligible for up to 70% aid intensity with an absolute cap of 50 million Euro (European Commission, 2022a).

4.3 Temporary Crisis and Transition Framework (TCTF)

TCTF built on the Ukraine TF in many aspects. It also included the threefold categorisation based on energy intensity. However, the maximum aid intensity for the baseline category (all companies) was increased, from 30% to 50%, with a €4 million absolute cap. The second groups' maximum aid intensity was increased from 50% to 65%, with a €50 million absolute cap. For the third group, maximum aid intensity remained at 70% but the absolute cap was raised to €150 million. One major difference in the Ukraine TF is that TCTF was for the first time built on the legal basis of TFEU 107 3(b), as well as TFEU 107(3)(c). This marks the first step of DG competition towards establishing operating aid as a normal and not crisis-related measure.

4.4 Clean Industrial Deal State Aid Framework (CISAF)

In large parts, CISAF transformed the short-term TCTF regulations into a long term framework. Crucially, CISAF is the first framework entirely based on the non-crisis article 107(3)(c). Under CISAF, direct energy price relief is only permitted for energy intensive companies. Applicable companies are defined as companies at risk of locating out of the EU as a result of carbon leakage. Mirroring the TCTF, the maximum aid intensity is 50%. Crucially, CISAF includes the condition that at least 50% of this aid is reinvested in decarbonisation. Furthermore, CISAF allows feed-in premiums with a maximum aid intensity of 100%.

5. CURRENT REGULATION ON OPERATING AID: METSAF

As a consequence of the blockade of the Strait of Hormuz, worldwide oil and gas supply has been disrupted. As a reaction to the consequent rise in oil and gas prices in Europe, DG Competition implemented yet another temporary state aid framework, loosening state aid rules, in particular rules governing operating aid even further. METSAF expands the allowed scope of operating aid in two ways. Firstly, it temporarily allows direct price support schemes, i.e. operating aid in four sectors: agriculture, fisheries, road transport and maritime transport. Secondly, the maximum allowed aid intensity for direct price support of energy intensive sectors as in CISAF is increased.

5.1 Direct price support schemes for special sectors

METSAF allows member states to subsidise up to 70% of extra costs for fuel or fertilisers due to the Middle East crisis in the production of agriculture, fishery and aquaculture goods. Furthermore, METSAF allows direct price support for firms active in rail, road and inland water transport, with a maximum aid intensity of 70% of the extra fuel costs due to the Middle East crisis (European Commission, 2026a). Important to notice is that the maximum aid intensity here is based on extra fuel costs. The scope of potentially applicable firms under this regulation is very broad, including basically all logistics and transportation firms and almost all firms active in food supplies.

At the same time, the aid intensity is strictly capped and connected to current energy prices. This is in contrast to the CISAF regulation on direct price support for energy intensive sectors, which is based on average wholesale prices.

This regulation marks the first time that DG Competition allows direct subsidies of brown energies, not based on the emergency legal basis but on the regular legal basis Article 107(3)(c) TFEU. Subsidising fossil fuels is problematic because of its incentive structure. When a good becomes scarce, such as oil during the ongoing Middle East crisis, increasing prices naturally lead to a reduction in consumption. Thus, supply and demand find a new, lower, equilibrium. By artificially lowering prices this incentive is reduced, and consumption does not react to the same extent as without the intervention. This is not optimal for two reasons. Firstly, it is a very costly and wasteful use of government money. Secondly, fuel subsidies directly contradict the goal of reducing emissions in the transport sector and more broadly the goals of the European Green Deal (European Commission, n.d.-b). However, it is also clear that the current measures are only intended until the crisis ends. Companies cannot replace fuel-based production or transport in such a short time frame due to high technology costs. Thus, a legitimate basis for operating aid exists. However, instead of applying subsidies to boost the ongoing transition to green energies and using the ongoing energy crisis to turn the current crisis into an opportunity for accelerated decarbonisation of the European economy, METSAF allows member states to use public finances to artificially extend the usage of brown technologies.

5.2 Direct price support for energy intensive industries as under CISAF

METSAF increases the maximum aid intensity for energy intensive industries as allowed under CISAF to 70%, a 40% relative increase in the maximum aid intensity compared to the original CISAF regulations. At the same time, for state aid spent under METSAF, i.e. state aid that goes beyond the CISAF cap, no investments in decarbonisation are required. Furthermore, METSAF applies the same definition of energy intensive industries as in CISAF.

The design of METSAF in this way is highly problematic. Firstly, as with CISAF, the maximum aid intensity is based on average energy prices. This means that depending on the development of price levels, aid intensity is in absolute terms theoretically unlimited. If prices increase, aid intensity is allowed to increase accordingly. The high aid intensity of 70% can not only lead to wasteful government spending but is also concerning for the level playing field of the single market. For example, if some countries subsidise energy input prices in certain sectors by 70% and others implement no subsidies at all, the level playing field is heavily tilted.

Secondly, the filter for applicable sectors that is borrowed from CISAF is not suitable for the purpose of METSAF. The filter for applicable firms is intended to replicate the risk of carbon leakage, i.e. sectors with high electricity intensity and trade openness. The logic of this filter in CISAF was that for a transition period firms that already electrified production require support to avoid relocation i.e. carbon leakage. This support was specifically combined with the requirement for investment in decarbonisation. The operating aid would buy time while companies increase efforts to decarbonise. With the second part, the investment requirement, removed under METSAF, the logic breaks down. The argument that operating aid is only of transitional character does not work if there is no incentive for further decarbonisation. More generally, it is questionable why carbon leakage risk should be the relevant criterion for a framework that is a reaction to an external oil and gas crisis. When oil and gas prices rise, the risk of carbon leakage does not necessarily increase accordingly. The Middle East crisis affects other parts of the world similarly to Europe, which is in contrast to the energy supply crisis following the start of the Russo-Ukrainian War that mainly affected Europe (International Energy Agency, n.d.). Therefore, while this filter in combination with the investment requirement might have been logical in TCTF and for CISAF, it does not

work in METSAF. It appears that the Commission, knowing that a filter was needed, simply chose an established filter and refrained from designing a new, more appropriate filter.

5.3 Applicable sectors under METSAF

Taking a closer look at the applicable sectors reveals that they are arbitrary and without any clear focus. In the framework itself DG Competition states that member states are discouraged from discriminating and picking certain industries for state aid support. DG Competition instead decided to rely on carbon leakage risk as a 'neutral' filter. While the list does include potentially strategic industries such as aluminium and pharmaceuticals production (European Commission, 2023, Annex I), it also includes less relevant and not necessarily support-worthy industries. The first two sectors on the list are 'Mining of hard coal' and 'Extraction of natural gas' – prime examples of so called 'sunset industries', industries for which long-term revival prospects are limited regardless of public support. Support of sunset industries is one of the major dangers of operating aid and yet several such industries are included in the energy intensive sectors list. As a result, CISAF allows operating aid for industries in which it is the most wasteful. In addition to these industries the list also contains sectors that appear rather arbitrary, such as manufacturing of motorcycles, manufacturing of prepared pet foods, and manufacturing of leather clothes, among others.

5.4 The escalatory dynamic throughout state aid frameworks

Analysis of the five frameworks that DG Competition enacted since 2020 reveals two concerning findings. Firstly, throughout the frameworks DG Competition broadened the scope and raised the maximum allowed aid ceiling for operating aid programmes, particularly for IESs. Secondly, DG Competition has gradually shifted the legal basis of state aid frameworks from the emergency and crisis provision Article 107(3)(b) TFEU to the standard provision Article 107(3)(c) TFEU. These two developments taken together show that operating aid is continuously being normalised by DG Competition. At the same time, the main filter for applicable industries explicitly allows support for brown industries and sunset industries. Given the high costs and the distortive effects on the single market of operating aid, this development is very concerning and should be addressed by DG Competition.

6. EMPIRICAL EVIDENCE

More important than legal regulations itself is in how far member states have made use of the higher flexibility of operating aid. Member states have applied operating aid under different EU regulations, such as individually notified aid under TFEU 107 3 (b) and TFEU 107 3 (c). Furthermore, operating aid has been included in broader policies approved under CISAF.

6.1 Operating aid under CISAF

So far, three countries, Germany, Bulgaria and Slovenia, have adopted state aid programmes that include direct industrial electricity subsidies (IESs), i.e. operating aid under CISAF. Among these, the largest one is the German Industriestrompreis programme with a total spending of €3.8 billion on operating aid (European Commission, 2026b). This makes it historically the largest operating aid programme in Europe. Bulgaria's programme totals €334 million and Slovenia's €90 million. Furthermore, Italy's Energy release 2.0 programme has recently been approved by the EC and will provide 30% energy price reductions for 3400 energy intensive companies (Jager, 2025).

6.2 Energy support programmes outside state aid frameworks

Over the last years several member states have adopted state aid programmes that include operating aid outside state aid frameworks. The longest running programme is the French Arean programme which supports French energy prices through guaranteed low nuclear energy prices. Another notable energy price support programme was the 'Iberian exception' that was intended to reduce electricity prices following the Russian invasion of Ukraine. The measure was built around an electricity price cap and had an overall budget of €8.4 billion and was limited until 2023 (European Commission, 2022c).

In response to the US war on Iran, many EU member states have applied energy subsidies, i.e. operating aid. In total, as of writing, (18 June, 2026) European countries have committed to spending around €12 billion on fiscal measures to reduce the impact of the US-Iran War on energy prices. As McWilliams et al. (2026) show, a majority of this aid consists of untargeted measures that lack a clear target group or conditionality (See Appendix 1).

Furthermore, 12 member states including Germany, Hungary, Spain and Italy have used subsidies to decrease the price of petrol. Out of the 12 billion euro spent on cushioning the effects of the US-Iran War, 10.2 billion euro increased the incentives for using fossil fuels.

6.2 The problematic use of operating aid

The previous two sections have shown that first, DG Competition has through several state aid frameworks broadened its scope and increased allowed aid intensity for operating aid. Secondly, member states have made use of this increased flexibility. Under CISAF member states have applied IESs such as Germany's Industriestrompreis or the Italian Energy release 2.0, while other operating aid programmes such as the Spanish exception have been individually approved by DG Competition. More recently, since the beginning of the US-Iran War, EU member states have committed an additional €12 billion in operating aid programmes. However, as this brief has shown, CISAF's filter for applicable industries is not appropriate and as Williams et al. (2026) have shown, most operating aid (IESs) following the start of the US-Iran War is not focussed on particular sectors. Overall, it is clear that this development cannot simply continue since the continuous and escalatory usage of operating aid endangers industrial sectors becoming dependent on state aid and wastes billions of government money.

7. HOW TO MOVE FORWARD: POLICY OPTIONS FOR DG COMPETITION

In the current situation, DG Competition has three broad policy options regarding the future usage and regulation of operating aid.

The first, most straightforward solution would be to rule out any form of operating aid. Consequently, the distorting effects and wasteful use of government money would be prevented. However, given the rise of industrial policy in other countries and the desire of member states to retain strategic industries, simply forbidding any form of operating aid would leave member states only with other insufficient policy options such as investment aid, nationalising strategic companies or using trade defence instruments. While these instruments are in many instances more appropriate, operating aid provides member states with the possibility of preventing the imminent extinction of strategic industries without fully nationalising firms or openly breaking WTO laws by applying quotas or tariffs. Therefore, some form of operating aid should still be permitted by DG Competition.

A second policy option would be to continue the flexibilisation of operating aid. As past developments have shown, new crises and pressure from member states could lead to even more flexibilisation in the usage of

operating aid, which leads to even higher negative effects on the single market and to wasteful government spending. Therefore, without major changes to state aid frameworks and internal approval guidelines, DG Competition should not continue its current path.

Finally, DG Competition could establish a state aid framework specifically for operating aid and similar internal guidelines for notified aid that limits the usage to only strategic and strategically threatened industries. This is the solution this policy brief advocates.

8. AMENDMENTS TO CISAF AND OTHER FRAMEWORKS

Firstly, all regulations allowing operating aid or IES programmes should be removed from frameworks such as CISAF or CEEAG. CISAF is especially designed to support the transition to a green economy and create new green sectors. Since operating aid is a defensive tool that retains industries but is not well suited to create new industry clusters, investment aid should be applied for that purpose. Only operating aid in the form of strike prices for the green transition should remain part of regular frameworks such as CISAF.

Secondly, DG Competition should remove the energy intensive industries support clause from the CISAF framework. As shown above, the CISAF filter used for defining applicable industries for electricity price relief is not appropriate and includes industries that do not require and do not deserve operating aid.

Thirdly, since there is a legitimate need for the usage of operating aid in special circumstances, DG Competition should establish a new emergency framework which regulates and limits the usage of operating aid explicitly.

9. A NEW FRAMEWORK

9.1 Introduction

DG Competition should clearly differentiate operating aid from investment aid. While investment aid should be used to build new industries or expand and modernise existing ones, operating aid should be used to retain strategic industries that are crucial for European resilience and strategic autonomy. Fundamentally, while investment aid programmes can be part of a long-term strategic industrial policy, operating aid should, due to its distortive effects, only be used in limited cases when absolutely necessary and not be part of long-term industrial policy. So far, DG Competition has enacted new state aid frameworks during or following large crises. However, to guarantee a coherent and reliable policy environment, DG Competition should instead establish a long-term framework for operating aid. The new framework for operating aid would be based on two conditions under which operating aid can be allowed. These conditions apply at the sectoral level. A sector has to fulfil the two conditions to be applicable for operating aid, not the economy in general. This represents a clear shift from DG Competition's current practice of establishing frameworks that include industry-specific regulations but lack explicit crisis triggers at the sectoral level.

9.2 Condition 1 : Strategic Importance Filter

Operating aid should be strictly limited to cases where it is absolutely necessary. The purpose of condition 1 is to capture existing European manufacturing capacity whose permanent loss would endanger economic functioning or security. No existing filter perfectly captures this concept. Instead, several different lists and definitions exist. Filters such as the Strategic Dependencies Methodology (European Parliament and Council of the European

Union, 2022) identify industries in which Europe is highly dependent on single foreign suppliers and in which European production does not yet exist. For this problem, operating aid is not suitable. Other filters such as the CER Directive directly focus on security and resilience, covering downstream services such as hospitals and infrastructure and not critical chemicals or medicine production capacity. While the EU FDI Screening Regulation follows a similar defensive logic as operating aid, it does not contain clear sectors and is therefore not applicable.

Among the existing lists, the current Industry Accelerator Act (IAA) proposal that defines the strategic sectors is the most promising list (European Commission, 2026c). It contains three distinct areas of strategic industries. Firstly, it indicates energy intensive industries including steel and cement, chemicals and aluminium. Secondly, it points to net zero technologies including batteries, solar PV, heat pumps, wind turbines, carbon capture, hydrogen, nuclear fission and solar thermal. Thirdly, it focuses on automotive industries, including sectors such as electric vehicles, traction batteries and low carbon steel used in vehicles. An important feature of this list is that most sectors are upstream in the supply chain and therefore more important for the functioning of the whole supply chain. Furthermore, as a supply side instrument, operating aid complements demand side instruments (such as public procurement regulations) that are included in the current design of the IAA. If the current proposal becomes EU legislation, DG Competition's operating aid framework should use this list of sectors as a filter for condition 1. However, it has to be said that this list does not include industries such as medicine production, which is also strategically important. Nevertheless, among existing lists the IAA is the most promising one. DG Competition should consider extending this list, but refrain from overloading it.

Table A.1: Comparative Overview of EU Lists of Strategic industries

Criterion	Unit of Analysis	Protection vs Development	Sector specificity	Key Weakness
CISAF Carbon Leakage List	Sector level	Neither – calibrated to carbon leakage risk	High	Wrong criterion: Electro intensity ≠ strategic importance
Strategic Dependencies Methodology	Product level	Development	Low – Product not sector level	Identifies where capacity is absent not where existing capacity needs protection
CER Directive	Service/infrastructure entity	Protection	Medium – 11 broad sectors	Covers downstream services not upstream manufacturing
FDI Screening Regulation	Transaction/Firm	Protection	Low – Factors for case-by-case decisions	Wrong threat: Foreign ownership vs. competitive destruction, no sector list
IAA Strategic Sectors	Manufacturing Sector	Mixed	High – Defined sector list	Includes development aspects, not yet official regulation

9.3 Condition 2-A: External crisis

The second condition requires that an external crisis lead to an economic situation that threatens the existence of strategic industries. Furthermore, condition 2 requires that the crisis be not a demand-side but rather a supply-side or unfair competition related crisis.

Firstly, a dramatic price hike in input materials like crude oil, natural gas and electricity, but also other materials such as certain rare earths, can render European producers in the short term uncompetitive and threaten their existence. An example of such a supply shock crisis is the ongoing US-Iran War and the closure of the Strait of Hormuz. Additionally, export prohibitions of specific input materials such as certain raw materials can also threaten the existence of certain industries. An example of this logic is Chinese export controls on rare earths, threatening the viability of European manufacturing sectors (Hintermayer & Hmaidi, 2025; European Central Bank, 2025).

Secondly, a fall in global or European demand can threaten the existence of strategic sectors. An example of such a crisis is the COVID 19 crisis that led to a global demand shock. Operating aid is not well suited for a demand-

side crisis, since it is a supply-side instrument (it improves production conditions). Other demand-side instruments such as Made in Europe Requirements for public procurement as in the Industrial Accelerator Act (IAA) are better tools to create stable demand for Europe-made goods in strategic sectors.

Thirdly, in some cases third countries, in particular China, make extensive use of state aid and thereby provide their firms with an unfair advantage against European firms. To counter such unfair competition, Trade Defence Instruments (TDIs) under WTO law are used. These measures, however, are costly and take a long time to become effective (Spain et al., 2026). In some cases the time between the beginning of the unfair subsidies and the WTO ruling can be so long that the affected European firms will have exited the market. In these cases operating aid can function as a bridge, buying time until a sustainable solution is found.

9.4 Condition 2-B: Demonstrating Viability Impact

The mere existence of a crisis does not suffice for the usage of operating aid. Firms can usually either internalise higher input costs or pass them on. The second condition therefore requires that the external crisis actually impact the strategic industry for which a member state wants to adopt a state aid programme. Therefore, condition 2-A confirms that an external crisis exists, while condition 2-B establishes necessity by showing that firms in the sector would likely exit without operating aid.

The crisis impact should be proven through market impact. Member states must show that firms active in a strategic sector are impacted by the external crisis. Proof can include the loss of contracts to competitors (i.e. shrinking of the European share of global production), price suppression (especially in the case of unfair foreign competition), margin compression, and sector level data on board-level decisions regarding manufacturing capacity closure. Since operating aid in this proposal is intended as an emergency measure to save vital industries during crises, DG Competition should allow member states discretion when evaluating the impact. It is clear that the true impact of a crisis can often be estimated only afterwards. However, DG Competition should accept the risk of supporting strategic industries that do not actually need support in favour of fast approval. To mitigate this problem, several safeguards should be implemented to prevent wasteful spending.

10. SAFEGUARDS

As described above, operating aid can distort competition on two levels: along member state lines, and on the firm level. On the firm level, the core risk of operating aid is that firms that are not able to be viable by themselves do not exit the market but remain active artificially.

- 1) **Non-funding regulation for unviable firms.** Building on the METSAF communication (European Commission, 2026a, point 61(i)), operating aid should not be given to firms that were already in difficulty in the accounting period prior to the crisis. As a definition for ‘firms in difficulty’, similar to METSAF, the definition borrowed from GBER could be used (Commission Regulation (EU) No 651/2014, art. 2(18)).
- 2) **Absolute aid intensity limit.** Generally, state aid must always be limited to the minimum needed for carrying out the aided project or activity (European Commission, 2025, paras. 6, 162). In the case of operating aid programmes, the aid intensity should not exceed the amount necessary for continuing production. Therefore, public support through operating aid should be capped at, for example, 15% of eligible costs, while a maximum aid amount per firm and per country must always be defined in an operating aid programme.

- 3) **Time limitation.** To prevent the creation of long-term dependency of beneficiaries on the state, operating aid programmes must be strictly time limited, with a cap at, for example, three years. While an external economic shock can last longer than three years, including extension clauses would lead to intense lobbying and prevent industrial strategy from adapting to new realities. If governments deem certain industries as too important to lose, other tools could be used to save these industries in the long term. Furthermore, aid intensity should decrease progressively over time to incentivise beneficiaries to adapt to market competition and higher production costs.
- 4) **Clawback mechanisms.** Condition 2 is, for simplicity, applied at the sectoral level. However, it could be that some firms are not affected to the extent that operating aid would be necessary. To prevent such firms from obtaining funding, clawback mechanisms that recover excess aid payments should be included in any operating aid programme. Furthermore, in the case that the expectations from condition 2-B do not materialise – i.e. that the crisis does not affect firms to an extent rendering their operations unviable – clawback mechanisms can be used to recover funding.

On the member state level, the core risk of any operating aid framework is that bigger member states, such as Germany and France, use it to pull production away from where it would optimally be located within the EU through fiscal capacity rather than economic merit. This problem can be addressed through two structural safeguards.

- 1) **Relative aid intensity limit.** Member states may grant state aid only up to a relative cap that is based on EU average input costs. This prevents governments from lowering production costs to unsustainable levels that distort competition with firms in member states without such subsidies. Additionally, since this safeguard is based on EU average prices, countries that are more affected by a crisis are allowed to use more operating aid. The value of this cap could be fixed at 50% of the EU average input costs. In the case of IES, a country that wants to reduce energy prices can only grant operating aid to the extent that the after-subsidy prices are not below 50% of the EU average. To provide disadvantaged regions with more flexibility in the usage of operating aid, the relative cap could be raised for such regions, for example, allowing member states to reduce energy costs in such regions to as low as 20% of the EU average (European Commission, 2025, paras. 6, 162).
- 2) **Anti-relocation condition.** Beneficiaries must confirm that they have not relocated production capacity from facilities in other member states to the aided site in the two years preceding the aid application, and must commit not to do so for two years following programme completion (European Commission, 2023, point 85(k)). This safeguard directly addresses the risk of intra-EU subsidy races by removing the incentive for firms to relocate production toward higher-subsidy jurisdictions and for governments to competitively outbid one another.

11. CONCLUSION

This policy brief has shown that operating aid has inherently different characteristics than investment aid. While it is more distorting and expensive than investment aid, there are legitimate circumstances in which operating aid is necessary. Over the last six years, DG Competition has normalised the usage of operating aid throughout several temporary state aid frameworks: increasing the allowed maximum aid intensity, broadening the sectoral scope, and shifting the legal basis from emergency regulation to standard state aid regulation. At the same time, regulation and, crucially, limitations of operating aid have not kept pace with this normalisation. In particular, the

support of energy-intensive production is currently based on an unsuitable definition of support-worthy sectors. This leads not only to wasteful usage of government money but also to the support of sunset and brown industries. Given the high total amounts of state aid and the potential market distortion, this development should not continue without change.

As a solution, this brief advocates for a new permanent operating aid framework with similar internal guidelines for individually notified aid. This new framework is built on two conditions that apply at the sectoral level. Firstly, applicable industries have to be strategic industries in accordance with the IAA definition of strategic industries. Secondly, applicable industries have to be affected by an external crisis that threatens the continued viability of these industries in Europe. Finally, safeguards such as clawback mechanisms, time limitations and anti-relocation conditions reduce the risk of subsidy races and the entrenchment of incumbents. Overall, this proposal allows member states to save certain industries while at the same time limiting wasteful usage of government money and protecting the functioning of the single market. DG Competition should establish this permanent framework in the near future and not wait until the next crisis arrives to implement yet another temporary framework.

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APPENDIX

APPENDIX 1: Subsidies and their impact on consumer incentives

Figure 4: Policies sorted by their effect on incentives to consume fossil fuels

