

## THE EUROPEAN NET ZERO INDUSTRY ACT

The European Commission (the Commission) has issued proposals aiming to broadly equalise Europe's net zero industry with the US Inflation Reduction Act (IRA) and China's near-monopoly on many critical exports. As part of the EU Green Deal Industrial Plan, the Commission has released a legislative proposal for a Net-Zero Industry Act (NZIA).

In March 2023, the Commission rolled out a package of legislative and regulatory proposals in the context of the EU Green Deal Industrial Plan aiming at strengthening the resilience and competitiveness of net zero technologies manufacturing in the EU. The aim is to make the EU energy system more secure, sustainable and less dependent on natural gas imports. The NZIA, coupled with the Critical Raw Materials Act, which we analysed in detail in our recent client briefing, sets out a European framework to reduce the EU's reliance on highly concentrated imports, while the proposed structure and operation of an European Hydrogen Bank (EHB) aims primarily to create an EU domestic hydrogen market and eventually to support imports to the EU.

### NET ZERO INDUSTRY ACT

Currently, the EU is a net importer of a plethora of key net zero technologies and components. The ultimate objective of the measures set out in the NZIA is to approach or reach, in aggregate, at least 40% of the annual deployment needs for strategic net zero technologies manufactured in the EU by 2030.

The NZIA is built on the following pillars: (i) setting enabling conditions (for example, simplifying permit-granting processes); (ii) accelerating CO<sub>2</sub> capture, (iii) facilitating access to markets (i.e., sustainability and resilience criteria in public procurement / renewable energy sources (RES) auctions), (iv) enhancing skills; (v) fostering innovation (for example, through regulatory sandboxes); and (vi) facilitating the coordination between the Commission and the Member States through a Net Zero Europe Platform. Net-zero strategic projects.

The NZIA sets out eight 'strategic net zero technologies' essential to the EU's decarbonisation and competitiveness objectives. These are:

- Solar photovoltaic and solar thermal technologies
- Onshore wind and offshore renewable energy

### Key issues

#### Net Zero Industry Act (NZIA)

- Ensures that by 2030, the manufacturing capacity in the EU of strategic net-zero technologies approaches or reaches at least 40% of the EU's annual needs.
- The Act supports eight strategic net zero technologies: (i) solar photovoltaic and solar thermal technologies; (ii) onshore wind and offshore renewable energy; (iii) batteries and storage; (iv) heat pumps and geothermal energy; (v) electrolyzers and fuel cells; (vi) biogas/biomethane; (vii) CCS; and (viii) grid technologies.
- Particular importance is given to sustainability and resilience criteria in public procurement and RES auctions.
- Public consultation open until 30 May 2023.
- EU Sovereignty Fund to be discussed in the summer.

- Battery/storage technologies
- Heat pumps and geothermal energy technologies
- Electrolysers and fuel cells
- Sustainable biogas/biomethane technologies
- Carbon Capture and storage (CCS) technologies, and
- Grid technologies (including electric vehicles smart and fast charging).

Other net zero technologies are also supported by the measures in the NZIA, but to a different degree, including sustainable alternative fuels technologies, advanced technologies to produce energy from nuclear processes with minimal waste from the fuel cycle, small modular reactors and related best-in-class fuels.

'Net zero technology manufacturing project' is defined as a "*planned industrial facility or extension or repurposing of an existing facility manufacturing net zero technologies*", and Member States must recognise as 'net zero strategic projects' net zero technology manufacturing projects that meet *at least one* of the following criteria:

- increase the manufacturing capacity of a component or part for which the EU heavily depends on imports from a single third country; or
- contribute to EU's supply chain competitiveness according to *at least three* of the following criteria:
  - by adding significant production capacity in the EU for net zero technologies;
  - by developing technologies with improved sustainability and performance, taking the global level as a reference point;
  - by putting into place measures to attract, upskill and reskill the EU workforce; or
  - by adopting low carbon and circular manufacturing practices.

## **Permit-granting process**

The Commission regularly highlights the fact that the complex and lengthy permit-granting processes in the majority of Member States undermine the planning and investment security needed for the effective development of net zero technology manufacturing projects in the EU.

To enhance efficiency and transparency, the Commission plans to introduce specific time limits on the permit-granting process for net zero manufacturing projects based on their size and status (this is similar to the proposals for new strategic projects in relation to critical raw materials). In particular:

- 12 months for net zero technology manufacturing projects with a yearly manufacturing capacity of less than one gigawatt (GW) and 18 months for projects of more than one GW;
- nine months for net zero strategic projects with a yearly manufacturing capacity of less than one GW and 12 months for projects of more than one GW.

At the same time, the NZIA requires Member States to set up one-stop shops to act as single points of contact for project promoters, facilitating and coordinating the entire permit-granting process and issuing a comprehensive decision within the applicable timeframe.

## **CO<sub>2</sub> injection capacity**

The Commission recognises that the emergence of a CCS value chain in the EU is currently hindered by a lack of CO<sub>2</sub> storage sites. Therefore, to facilitate the development of CCS projects, the NZIA sets the objective of achieving, by 2030, an annual injection capacity of at least 50 million tonnes of CO<sub>2</sub> in storage sites located in the EU, its exclusive economic zones or on its continental shelf.

To this end, the NZIA sets a binding timeline for the obligations of Member States, whereby each Member State:

- by three months after NZIA's entry into force, must:
  - make publicly available data indicating where CO<sub>2</sub> storage can be permitted; and
  - require licensees of oil and gas production sites to make publicly available all geological data relating to production sites that have been decommissioned or where decommissioning has been notified.
- by six months after NZIA's entry into force and each year thereafter, submit a report to the Commission describing:
  - CO<sub>2</sub> capture projects and an estimation of the corresponding needs for injection and storage capacities;
  - CO<sub>2</sub> storage projects in progress; and
  - national support projects that could be adopted to launch the aforementioned projects.

It is worth noting that Article 18 of the NZIA obliges licensees of oil and gas production in the EU to contribute to the CO<sub>2</sub> injection target *pro rata* to their oil and gas manufacturing capacity between 1 January 2020 and 31 December 2023. In this context, within 12 months of the entry into force of the NZIA, these entities must submit to the Commission a plan detailing how they intend to meet their contribution to the EU CO<sub>2</sub> injection capacity objective by 2030, while two years after its entry into force and every year thereafter, they must submit a report, to be published, detailing their progress.

## **Access to markets**

### **Sustainability and resilience criteria in public procurement and RES auctions**

To boost diversification of supply for net zero technologies, the NZIA requires public authorities to consider the following cumulative sustainability and resilience criteria in public procurement or RES auctions, giving them a weight between 15% and 30% of the award criteria:

- environmental sustainability going beyond the minimum requirements in applicable legislation;
- where an innovative solution needs to be developed, the impact and the quality of the implementation plan, including risk management measures;

- where applicable, the tender's contribution to energy system integration; and
- the tender's contribution to resilience, taking into account the proportion of the products originating from a single source of supply.

#### **Other forms of public intervention – boosting demand**

The NZIA encourages Member States to set up schemes benefitting consumers to incentivise the purchase of products based on net zero technology without prejudice to State aid rules. The schemes should be designed to promote the purchase of highly sustainable and resilient products. Schemes can provide additional proportionate financial compensation not exceeding 5% of the cost of the product to the consumer.

#### **Net Zero regulatory sandboxes**

The proposal introduces regulatory sandboxes to test innovative net zero technologies in a controlled environment for a limited amount of time. The innovative technologies tested in the sandboxes could eventually become essential to achieve the EU's climate neutrality objective, ensure the security of supply and resilience of the EU's energy system and consequently enter the scope of strategic net zero technologies under the NZIA.

The conditions for the establishment and operation of the net zero regulatory sandboxes will be clarified in subsequent implementing acts, and the Commission will publish Guidance for Sandboxes in 2023, as announced in the [New European Innovation](#) Agenda, to support Member States in preparing the net zero technology sandboxes.

#### **Financing tools**

The NZIA proposes to bring Member States and the Commission together with relevant financial institutions under a Net Zero Europe Platform to discuss private sources of financing, investment needs and existing financial instruments and EU funds, emphasising the role of the EIB and other InvestEU implementing partners.

Nevertheless, the Commission recognises the important role of public support, whether in the form of EU grants or State aid. In terms of national resources, the adoption of the Temporary Crisis and Transition Framework and the endorsement of the General Block Exemption Regulation allow Member States to grant aid in a more flexible, simplified and expeditious manner, while limiting distortions to the Single Market and preserving cohesion objectives.

In addition to the existing funding tools under the current Multiannual Financial Framework (MFF), the Commission emphasises the importance of a European Sovereignty Fund that could provide a structural answer to the EU's investment needs and keep the EU in the forefront of the development of critical and emerging technologies relevant to the green and digital transitions, including net zero technologies.

The idea of a new EU Sovereignty Fund was first raised by President Ursula von der Leyen in a speech ahead of the European Council meeting of 15 December 2022, and it is expected to be discussed in the course of the mid-term review of the MFF this summer.

#### **Next steps**

The NZIA is solely a proposal of the Commission. It will certainly be amended in the context of the ordinary legislative procedure as it is discussed,

negotiated and agreed by the European Parliament and the Council of the European Union before its adoption and entry into force.

The proposal is the subject of a public consultation which will remain open until [30 May 2023](#).

## KEY CONSIDERATIONS

It has become evident that the measures taken by the US (e.g., the Inflation Reduction Act (IRA), the Bipartisan Infrastructure Act, etc.) to improve its economic competitiveness, innovation and industrial productivity, prompted the EU to respond with a package of legislative and regulatory reforms including the Critical Raw Materials Act, the NZIA and the EHB.

The urgency of the response is evidenced by the fact that the Commission published the NZIA without carrying out the normal impact assessment. As a matter of fact, the NZIA states that *"an impact assessment could not have been delivered in the timeframe available prior to the adoption of the proposal. The analysis and all supporting evidence will be set out in a staff working document published at the latest within three months of the proposal's publication."*

In addition, when describing the context of its proposal, the Commission highlights that other countries are heavily investing and rolling out support measures to innovate and strengthen their production capabilities, explicitly referring to the US IRA, Japan's green transformation plans and India's Production Linked Incentive Scheme.

Nevertheless, on financing, these proposals bring little change, as they refer to existing EU funding tools and State aid (available depending on the Member State's financial capacity). It appears that the Innovation Fund, which is financed through EU ETS revenues, and potentially the EU Sovereignty Fund, which might be approved this summer, will constitute the two main funding tools for achieving the ambitious targets set out in the Commission's proposals. According to a position paper of the Danish Ministry of Finance on the NZIA, the revised EU ETS alone is expected to raise about EUR 700 billion by 2030, funds that could be used by Member States to accelerate their green industrial transformation.

In the absence of additional or new funding sources and given the restrictions posed by the EU State aid rules and the shared competences principle, the Commission has proposed soft-law measures aimed at cutting red tape, enhancing Member States' coordination and creating flexible regulatory conditions, without prejudice to the WTO rules.

The EU is also working to coordinate with the US on critical minerals and renewable energy development. Negotiations are ongoing for a critical minerals trade agreement that would, under the Internal Revenue Service's (IRS) guidance for the IRA, treat the EU as a free trade agreement partner. This treatment would mean EU producers could benefit from EV tax credits created under the IRA. Since Japan recently struck a critical minerals trade agreement with the US and under the IRS guidance for the IRA, its producers will be eligible to benefit from the tax credits. Additionally, the EU and US are negotiating through a "Clean Energy Incentives Dialogue" to coordinate on clean energy subsidies.

In a recent [paper](#) published by the European Parliament's Research Service, the IRA is described as "*a huge investment bill pouring billions of dollars into the American economy by favouring US-made clean energy and technology*" demonstrating the EU perception of the IRA. This boils down to the fundamental differences in the regulatory and competition law frameworks in the two jurisdictions. Under EU law, the IRA tax credits would be regarded as a form of State aid, and State aid is, in principle, considered incompatible with the EU internal market subject to certain exceptions.

The EU's 2021-2027 long-term budget, together with the NextGenerationEU recovery instrument, amounts to EUR 2.018 trillion, 30% of which will be spent to fight climate change. Therefore, the EU provides significant financial support to green projects and reforms, ensuring, nevertheless, the proper functioning of the internal market by setting certain eligibility and compatibility with State aid rules criteria.

Another point that is expected to be hotly debated amongst the Member States is whether to include nuclear technologies in the list of eligible net zero strategic projects and, if so, under what conditions.

For now, it is over to the European Parliament and Council to consider these latest proposals from the Commission.

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