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The Net-Zero Industry Act

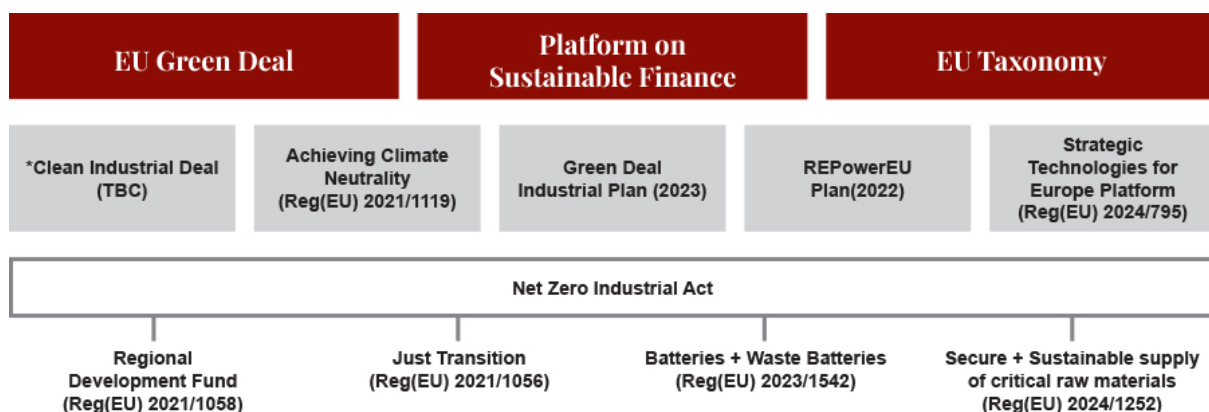
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In order to reach its “net-zero” goals, the European Union is continuing to build out a regulatory framework focused on scaling up the investment into the manufacturing and development of “net-zero technologies”.

The latest development is Regulation (EU) 2024/1735,¹ referred to as The Net-Zero Industry Act (the “Act”), which came into force throughout the European Union (the “EU”) on 29 June 2024. It is directly effective across all Member States and is the latest piece of legislation in the EU’s new “Clean Industrial Plan”.² The Act aims to make investing into net-zero technologies in the EU simpler and more attractive. Net-zero technologies are currently given a broad definition, as further set out below. The Act contains the outline for a raft of changes to national and European planning and approval regimes, such as streamlining the procedure for obtaining permits, shortening timetables for approvals, increasing transparency and reporting in respect of carbon capture opportunities, easing market access, and state funding. These changes are, in part, an acknowledgment that substantial investment, including private capital participation, is necessary to scale up the manufacturing of net-zero technologies at the rate needed to support the EU’s 2030 climate target.³

Whilst the Act contains the outline of a new regime, it suffers from a lack of detail around implementation and funding. The EU Commission has announced a proposal for a new Industrial Decarbonisation Accelerator Act which, it is promised, will “channel investment in infrastructure and industry” and “speed up related planning, tendering and permitting processes”.

In this update we look at the key provisions of the Act, and their possible impact, as well as identify where further legislation and guidance is still required from EU legislators in order to ensure the Act’s effectiveness.



*Clean Industrial Deal: as set out by Ursula von der Leyen in her speech of 18 July 2024

What is the scope and purpose?

The Act looks to harmonise national regimes across the currently fragmented internal market, to make it easier and more attractive to invest in the manufacturing of technologies that are needed for the EU's economy to achieve the "energy transition" within its targeted timeframe. The Act states that the EU's aim is to ensure that it reaches a manufacturing capacity of net-zero technologies sufficient to meet at least (i) 40% of its annual deployment needs necessary for its 2030 climate target referred to above; and (ii) 15% of world production of such technologies by 2040.

The Act brings in requirements for Member States to make changes to the regulatory environment that will cut the red tape and accelerate permitting for new net-zero technology manufacturing and assembly sites. The Act acknowledges that boosting both state and private investment in, and financing of, net-zero technology production will be an essential part of achieving its targets; however, not much detail has been included in the Act on how such financing mechanisms will be facilitated (see further detail below).

Net-Zero Technologies

Net-zero technologies are at the heart of the Act, with manufacturing of net-zero technologies being a principal driver for achieving decarbonisation in the EU.

The Act lists specific technologies included within the scope of "net-zero technologies," such as:

- solar;
- onshore wind and offshore renewables;
- battery and energy storage;
- heat pumps and geothermal energy;
- hydrogen technologies;
- sustainable biogas and biomethane;
- carbon capture and storage;
- electricity grid; and
- nuclear technologies.

By 30 March 2025, the Commission is required to adopt a delegated act in order to identify sub-categories within net-zero technologies and specific components used for those technologies, the primary purpose of which can be said to be "net zero". Until this legislation is published, it is not possible to be clear on the exact scope of the provisions. We understand that such delegated acts should develop a methodological analysis of, and apply detailed criteria to, the assessment of the supply chains and the components of net-zero technologies to determine their status and treatment under the Act.

In addition, the Act requires Member States designing auctions for energy from any of these renewable sources to include certain pre-qualification criteria, including in respect of "responsible business conduct". What is meant by this is not expanded on in the Act, so we will have to wait to see how this is interpreted by Member States when setting such criteria for future such auctions.

Net-Zero Strategic Project Designation

The Act has developed a special designation for “net-zero strategic projects,” which benefit from priority status in respect of regulatory approval and permitting processes. Net-zero strategic projects include: (i) net-zero technology manufacturing projects, (ii) CO₂ capture projects, (iii) CO₂ storage projects, and (iv) CO₂ transport infrastructure projects, in each case subject to an approval process which is further outlined below.

Net-zero strategic projects benefit from a fast-track status and should be “*treated in the most rapid way possible in accordance with Union and national law.*” In order to qualify for such status, projects will need to fulfil at least one of the following criteria:

- contribute to the technological and industrial resilience of the EU’s net-zero technologies by increasing the manufacturing capacity of a component or segment of the net-zero technology supply chain;
- have a clear, positive impact on the EU’s net-zero industry supply chain or downstream sectors by providing access to the best available net-zero technology or to products produced in a first-of-a-kind manufacturing facility; or
- contribute to reaching the EU’s climate or energy objectives by manufacturing net-zero technologies through practices that implement improved environmental sustainability and performance that significantly and permanently reduce CO₂ emission rates.

Such designation would further simplify the process of obtaining the relevant permits and navigating the regulatory approval process by shifting the relative weights given to various competing criteria considered when granting permits and approvals to such projects. The Act does not specify assessment criteria used to determine whether or not a project would qualify for the “net-zero strategic project” status. The Act notes that relevant local authorities in Member States will be able to assess projects on “a case-by-case” basis, taking into account the project’s contribution to “*public interest*”. Where an application has been rejected, a project promoter can apply to the Commission directly in order to be re-assessed for the net-zero strategic project status.

Further guidance on the application and assessment process will be set out in an implementing act that the Commission is required to publish by March 2025 with the objective of ensuring a uniform standard for such projects across the EU.

Energy-Intensive Facilities

It is interesting to note that the Act acknowledges that specific components in the supply chain of net-zero technologies are produced through energy-intensive production processes⁴, many of which are characterised by a high energy and carbon intensity, making their CO₂ emissions usually hard to abate. In order to facilitate the “energy transition” and decarbonisation, the Act brings such energy-intensive facilities into its scope, and therefore eligible to benefit from the streamlined regime, where they produce components “*primarily used*”⁵ in net-zero technologies.

In addition, due to the need to decarbonise energy-intensive sectors as a whole, the Act also applies to energy-intensive industries that produce specific components used in the supply chain of net-zero technologies, even when such industries do not meet the “primary use” test mentioned above. This is conditional on the relevant project comprising the construction or conversion of such a facility leading to a significant reduction of CO₂ emissions stemming from the production activities.

The Act notes that the purpose of specifically including the energy-intensive facilities within scope is to ensure access to a sustainable supply of net-zero technologies in the EU market. In addition, by tying such industries into the framework of the Act, energy-intensive sectors may fall within the

scope of “sustainable financing”. Without such regulatory incentive, investing in energy-intensive sectors (even when such investment is tied to their decarbonisation) has often been excluded from what is considered to be “sustainable financing”. The expectation is that, in line with the intentions set out in this Act, other regulations, including the Sustainable Finance Disclosure Regulation, may also look to specifically include the decarbonisation and transition of hard-to-abate sectors within the scope of what can be considered sustainable finance.⁶

In her speech to the European Parliament, President Ursula von der Leyen pledged to put forward a new Clean Industrial Deal in the first 100 days of this new session to “*channel investment in infrastructure and industry, in particular in energy-intensive sectors*”, so further developments in relation to this sector could be forthcoming.

Streamlining regulatory processes and timeframes

The Act contains a number of measures aimed at lowering the administrative burden of getting eligible projects off the ground.

- **Single point of contact:** By the end of this year, all Member States must establish or designate a “single point of contact” responsible for facilitating and coordinating the permit granting process for net-zero technology manufacturing projects and for providing information on streamlining the administrative process.
- **Shortening application timeframes:** Caps are imposed on the maximum duration of any permit-granting process relating to net-zero technology manufacturing projects (subject to certain caveats/carve outs). These caps are set by reference to the GW production capacity of the project and range from 12–18 months.
- **Cross border co-ordination:** Where an environmental impact assessment is required, the regulatory “single point of contact” will give guidance on the scope and level of detail required before the assessment is carried out. Where the obligation to assess the project’s environmental impact arises simultaneously under multiple EU Directives, Member States are required to ensure that co-ordinated, or joint, procedures fulfilling all of these requirements are applied. Under such co-ordinated procedure, the competent authority shall provide for a single assessment of the environmental impact of the project. There are also similar provisions in respect of planning applications and review.
- **Environments Impact Assessment (“EIA”) timeframe:** Where an EIA is required in respect of a net-zero technology manufacturing project, the Act contains a requirement that the competent authority render this within a maximum period of 90 days from receipt of all relevant information. This is significantly faster than usual practice.

Another interesting proposal around lessening the regulatory burden comes in the creation of “Net-Zero Regulatory Sandboxes”. The Act sets out a framework under which innovative net-zero technologies that meet certain criteria can be tested in a controlled real-world environment but subject to a lighter touch/flexible regulatory regime where this is possible.

Greater transparency - Publication of CO₂ capture projects

The Act creates a requirement that Member States, by 30 December 2024:

- publish data on suitable CO₂ storage sites;
- submit a report to the Commission mapping CO₂ capture, storage, and transport projects in progress in their territory, detailing status and any relevant national support measures; and

- oblige entities which have an authorisation⁷ to prospect or explore for or produce hydrocarbons in a specified area to publish (on a non-reliance basis) geological data relating to production sites that have been, or will be, decommissioned and, if available, economic assessments of the respective costs of enabling CO₂ injection.

The Act also requires entities holding authorisation for oil and gas production within the EU to be subject to an individual contribution target for their contribution to the EU-wide target for available CO₂ injection capacity. Details of how this target is to be calculated are set out in the Act.⁸ By 30 June 2025, these entities will be required to submit a plan to the Commission on how they intend to meet this contribution, another step toward pushing forward the energy transition agenda.

While requirements to disclose decarbonisation plans and the existence of net-zero strategic projects, including in particular, CO₂ storage projects, can be seen as a means to incentivise investment opportunities in these sectors, it will be important to understand the scope and burden of these additional reporting obligations on market participants.

Net-Zero Europe Platform

The Act also establishes a new body, “The Net-Zero Europe Platform”, that will be formed of representatives from Member States and the Commission. The platform is tasked with advising on bringing the aims of the Act into effect. This body should encourage and enable closer cooperation, knowhow, and technology sharing along the net-zero value chain between the EU and third countries and ensure a greater awareness of the key drivers that will enhance the competitiveness and attractiveness of investment into net-zero manufacturing technologies.

Coordination of financing

The Act contains provisions aimed at assisting relevant projects to gain necessary financing, both directly through the Union’s budget and by providing assistance and advice to project promoters in respect of private financing, and resources such as the EIB and the EBRD.⁹ The Act specifically identifies the need for, and importance of, private capital investment in order for net-zero manufacturing technologies to “scale up” at the rate required to achieve the energy transition. The Act does not include specific detail on how such private financing can be facilitated; however, it is clear that where a project falls within the scope of the Act, the Commission is encouraging Member States to enable financing solutions for such projects, including blended public and private solutions where necessary. In her recent speech to the European Parliament, Ursula von der Leyen announced a new European Competitiveness Fund which will provide funding for European projects that support the Clean Industrial Deal.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings London lawyers:

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¹ Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem and amending Regulation (EU) 2018/1724

² EU President Ursula von der Leyen pledged to put forward "a new Clean Industrial Deal in the first 100 days" of her second term, in [her speech to the European Parliament](#) on 18 July 2024.

³ A reduction of net greenhouse gas emissions by at least 55% by 2030, compared with 1990

⁴ Such as steel, aluminium, non-ferrous metals, chemicals, cement, lime, glass, ceramics, fertiliser, and paper

⁵ Defined as: "final products and specific components which are essential for the production of net-zero technologies ... or final products, specific components and specific machinery which are essential for the production of net-zero technologies on the basis of evidence provided to a national competent authority by the project promoter, with the exception of energy-intensive industry decarbonisation projects for which such evidence is not required." Energy-intensive industry decarbonisation projects are defined as: "the construction or conversion of the commercial facility of an energy-intensive business that is part of the supply chain of a net-zero technology and therefore reduces emission rates of industrial processes significantly and permanently."

⁶ The European Supervisory Authorities published an opinion on Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures (the SFDR) on 18 June 2024, which includes a recommendation for the European Commission to amend the SFDR so that it includes a "transition investment" concept in order to encourage transition finance.

⁷ Under Directive 94/22/EC

⁸ Those individual contributions shall be calculated pro rata on the basis of each entity's share in the Union's crude oil and natural gas production from 1 January 2020 to 31 December 2023 and shall consist of CO₂ injection capacity in a storage site permitted in accordance with Directive 2009/31/EC and available to the market by 2030. Entities with crude oil and natural gas production below the threshold set in accordance with a delegated act pursuant to paragraph 12 of this Article shall be excluded from this calculation and shall not be subject to a contribution.

⁹ The European Investment Bank and the European Bank for Reconstruction and Development