

# The Net-Zero Industry Act: the European Commission’s latest initiative to scale up the clean energy transition

On March 16, 2023 the European Commission (the “**Commission**”) proposed the Net-Zero Industry Act<sup>1</sup> (the “**Proposal**” or the “**Regulation**”), a cornerstone of the EU Green Deal Industrial Plan<sup>2</sup>, which aims to keep the EU competitive in the clean energy transition by attracting and retaining manufacturers of clean-technologies. To achieve the goals of approaching or reaching at least 40% of the Union’s deployment needs by 2030 and net-zero by 2050,<sup>3</sup> the Regulation supports an ambitious scaling up in the manufacturing of key net-zero technologies. Its most notable proposals are (a) defining a closed list of “net-zero technologies” which will benefit from streamlined permitting procedures and other support, and (b) obliging oil and gas producers to contribute to an EU CO2 storage objective.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

BRUSSELS

**François-Charles Laprèvote**  
+32 2 287 2184  
[fclaprevote@cgsh.com](mailto:fclaprevote@cgsh.com)

**Camilla Cozzani**  
+32 2 287 2035  
[ccozzani@cgsh.com](mailto:ccozzani@cgsh.com)

**Liam Rowley**  
+32 2 287 2356  
[lrowley@cgsh.com](mailto:lrowley@cgsh.com)

**Ambroise Simon**  
+32 2 287 2042  
[amsimon@cgsh.com](mailto:amsimon@cgsh.com)

<sup>1</sup> Proposal for a Regulation of the European Parliament and of the Council on establishing a framework of measures for strengthening Europe’s net-zero technology products manufacturing ecosystem (COM(2023) 161 final) (“**Net-Zero Industry Act**”); text available [here](#). See also the Press Release available [here](#).

<sup>2</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social committee and the Committee of the Regions - A Green Deal Industrial Plan for the Net-Zero Age (COM(2023) 62 final); text available [here](#). See also Cleary blog post available [here](#).

<sup>3</sup> The Annex to the Net-Zero Industry Act, available [here](#), identifies strategic net-zero technologies that will receive support to meet the 40% benchmark. The Annex includes the following net-zero technologies: solar, wind, battery/storage technologies, heat pumps and geothermal industries, electrolysers and fuel cells, sustainable biogas/biomethane technologies, carbon capture and storage technologies and grid technologies.  
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The Regulation sets a defined list of net-zero technologies<sup>4</sup>: (i) renewable energies technologies;<sup>5</sup> (ii) electricity and heat storage technologies; (iii) renewable fuels of non-biological origin technologies; (iv) heat pumps ; (v) electrolyzers and fuel cells; (vi) carbon capture, utilization and storage; (vii) grid technologies; (viii) sustainable alternative fuels technologies; (ix) advanced technologies to produce energy from nuclear processes with minimal waste from the fuel cycle, small modular reactors, and related best-in-class fuels; and, (x) energy-system related energy efficiency technologies.

The Net-Zero Industry Act relies on seven pillars the Commission considers key in driving investments towards net-zero technologies:

— **Enabling conditions for net-zero technology manufacturing.** The Regulation aims to streamline administrative processes for net-zero technologies projects. First, under the “one-stop shop” principle, project promoters will only have to deal with one single point of contact per country, designated by the relevant Member State, for the permitting process. Second, the Regulation sets up detailed timelines for net-zero manufacturing projects permit approval. Permit processes are to last between 6-18 months for

evaluating the construction of the project,<sup>6</sup> with projects designated as strategic<sup>7</sup> benefiting from the fastest procedures. Third, the Regulation also streamlines the EU environmental impact assessment process: the project developer will only have to deal with the single point of contact, and assessments are subject to further time-limits. In the most complex cases, all required environmental impact assessment opinions should at the latest be issued 3 months after all necessary information is sent and consultations completed.<sup>8</sup>

— **Scaling up of CO<sub>2</sub> injection capacity.** The Proposal sets an EU-wide target annual CO<sub>2</sub> injection capacity of 50 million tons in storage sites, to be achieved by 2030. Importantly, the Regulation would oblige EU oil and gas producers<sup>9</sup> to make proportional contributions towards this target. These contributions are to be calculated by the Commission, pro-rata of each entity's share in the EU's crude oil and natural gas production between 2020 and 2023.<sup>10</sup> Oil and gas producers will then have to submit a plan to the Commission within a year detailing how they intend to meet their contribution to the CO<sub>2</sub> storage objective. They will also submit a biennial (i.e. every 2 years) report to the Commission

<sup>4</sup> Net-Zero Industry Act, Article 3(1)(a).

<sup>5</sup> As defined in Directive (EU) 2018/2001 of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, Article 2(1).

<sup>6</sup> Depending on the GW/year manufacturing capacity of the project (i.e. under/over 1 GW per year), and whether the project is designated as “strategic” under the Regulation. Extensions will be exceptional, generally limited to 1 month and no longer than 6 months where the project raises exceptional safety concerns. Time-limits are halved for extensions of existing projects. *See* Net-Zero Industry Act, Articles 6 and 13.

<sup>7</sup> Project promoters can apply for their projects to be recognized as “net-zero strategic projects” by the relevant Member State. Permitted CO<sub>2</sub> storage projects in the EU will easily fulfil the conditions. For other industries listed in the Annex (*see*

footnote 3) the conditions are more stringent and focus on whether the project reduces the dependence of the EU on a single third country, provide a significant amount of value (in terms of manufacturing capacity, skilled-workforce creation, improving sustainability and performance and being low-carbon), or their location in a less developed part of the EU. *See* Net-Zero Industry Act, Article 10 and Annex.

<sup>8</sup> Where only one impact assessment is required under Directive 2011/92/EU, the impact assessment should be completed within 30 days. *See* Net-Zero Industry Act, Article 7.

<sup>9</sup> Specifically those oil and gas producers holding an authorization under Directive 94/22 EC (i.e. an exclusive right to prospect, explore or produce hydrocarbons in a geographical area within the EEA).

<sup>10</sup> Net-Zero Industry Act, Article 18(1)-(3).

detailing their progress, which will be made public.<sup>11</sup>

- **Facilitating access to markets.** First, the Regulation harmonizes some criteria public authorities will have to take into account when assessing public procurement tenders or auction bids for net-zero manufacturing projects. It requires authorities to give the tenders and bids' "sustainability and resilience contribution" a weight of between 15% and 30% of the award criteria.<sup>12</sup> Second, the Proposal envisages that if a Member States incentivizes households' purchase of net-zero technology products, the purchase of net-zero technology products with a higher "sustainability and resilience contribution" should be incentivized to a greater extent.<sup>13</sup> The purchase of these more virtuous products will therefore benefit from an "additional proportionate financial compensation", not exceeding 5% of the cost for the consumer. The Proposal clarifies this is without prejudice to State Aid Rules.<sup>14</sup>
- **Enhancing skills for quality job creation.** The Commission will support the setting up of Net-Zero Industry Academies ("**Academies**").<sup>15</sup> These Academies will provide a centralized point where workers can receive the necessary training and education required for the net-zero technology industry. Where equivalent, the learning programs

of the Academies will be subject to professional qualifications recognition by the Member States.<sup>16</sup>

- **Fostering innovation.** The Proposal envisages the introduction of "regulatory sandboxes."<sup>17</sup> These are intended to be areas where "innovative net-zero technologies"<sup>18</sup> can be tested, developed and validated in a controlled environment to speed up their placement on the market. The Proposal is light on details concerning which projects could benefit from it or the consequences of inclusion in such a "sandbox." The Commission is instead empowered to provide further clarification through implementing acts.<sup>19</sup>
- **Creating a governance structure.** The Proposal establishes a Net-Zero Europe Platform which is composed of Member States and the Commission. This Platform will serve as a coordination hub where the Commission and Member States will be able to exchange information with each other, with Net-Zero Industrial Partnerships,<sup>20</sup> and with "relevant third countries to help promote the adoption of net-zero technologies globally".<sup>21</sup> It will also support investment for projects and foster contacts across Europe's net-zero sectors.
- **Establishing a framework for monitoring the implementation of the Regulation.** The Commission and Member States will monitor supply chains on an ongoing basis to track

<sup>11</sup> Net-Zero Industry Act, Article 18(4) and (6).

<sup>12</sup> Net-Zero Industry Act, Articles 19(2), 19(3), and 20(2).

<sup>13</sup> Only for the industries listed in the Annex (*see* footnote 3). *See* Net-Zero Industry Act, Article 21 and Annex.

<sup>14</sup> Net-Zero Industry Act, Article 21(1)-(3). In particular, (a) the process for assessing the "resilience and sustainability contribution" of a product should be open, non-discriminatory and transparent; (b) any net-zero technology final product shall be entitled to join such a consumer-support scheme; and (c) the authority shall specify a pass mark for products to be eligible for an additional proportionate financial compensation.

<sup>15</sup> Net-Zero Industry Act, Article 26.

<sup>16</sup> Net-Zero Industry Act, Article 24.

<sup>17</sup> Net-Zero Industry Act, Article 26(1).

<sup>18</sup> *I.e.*, net-zero technologies ready to be tested but not yet be commercialized, and which "comprise genuine innovation." *See* Net-Zero Industry Act, Article 3(1)(c).

<sup>19</sup> Net-Zero Industry Act, Article 26(2).

<sup>20</sup> The Green Deal Industrial Plan states that these are partnerships that aim to promote the adoption of net-zero technologies; *See* text available [here](#), page 19, section 2.4. A concrete example of such partnerships would be the "Coalition of Trade Ministers on Climate"; Press Release available [here](#).

<sup>21</sup> Net-Zero Industry Act, Article 28(4).

progress and application of the Regulation and its objectives.

Important ambiguities continue to surround the role of nuclear energy. While conventional nuclear technology is excluded from the list of strategic net-zero technologies, “small modular reactors” and “advanced technologies able to produce energy from nuclear processes with minimal waste from the fuel cycle”,<sup>22</sup> seemingly referring to fusion energy, are part of the Proposal. The role ultimately agreed upon by the Council and Parliament for nuclear energy within the Net-Zero Industry Act remains to be seen.

Moreover, while significant investments are expected to be made in these net-zero technologies, this must be done without prejudice to State aid rules. To ensure State aid rules do not become a hurdle in allowing Member States to further support measures needed for the transition towards a net-zero industry, the Commission adopted a Temporary Crisis and Transition Framework on March 8, 2023.<sup>23</sup> This ensures that Member States remain able to set up a series of schemes, notably for accelerating the rollout of renewable energy, energy storage, and for the decarbonization of industrial production processes, until December 31, 2025.

Before the Net-Zero Industry Act is adopted and able to enter into force, it will need to be discussed and agreed by the European Parliament and the Council of the European Union under the ordinary legislative procedure.

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<sup>22</sup> Net-Zero Industry Act, Article 3(1)(a).

<sup>23</sup> Communication from the Commission Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, not yet

published in the Official Journal of the European Union; text available [here](#). See also Press release available [here](#) and the Cleary blog post available [here](#).