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New EU State Aid Rules to Support Private Investments in Green Technologies

EU – April 2023

Background

On February 1, 2023, the European Commission presented the EU Green Deal Industrial Plan (GDIP).[1] The plan is a key element in the EU's response to the US's green subsidy scheme, i.e., the US Inflation Reduction Act.[2] The GDIP is a package of measures intended to counter the risk of more attractive public subsidy mechanisms in other countries (including the US) diverting investments in green technologies outside the EU.

On March 16, 2023, the European Commission presented the first two legislative proposals that form part of the GDIP: the Net-Zero Industry Act (NZIA)[3] and the Critical Raw Materials Act (CRMA)[4] (more information can be found in our latest EU Sustainability Outlook). Respectively, the two proposals aim to:

- Promote the production of green technologies such as solar panels and wind turbines) in Europe and establish streamlined administrative and permit procedures
- Increase a secure supply of critical raw materials in Europe, particularly those necessary for the production of green technologies (i.e., lithium and cobalt)

The European Commission has also proposed a revision of state aid rules, with two separate interventions. First, it amended the General Block Exemption Regulation (GBER)[5] to include investments in clean energy under the category of state aid that can be granted without prior notification to, and approval by, the European Commission.

Second, it amended the Temporary Crisis Framework,[6] adopted in March 2022 to counter the economic crisis triggered by the Russia-Ukraine war, converting it into the Temporary Crisis and Transition Framework (TFCT)[7] to specifically address fossil fuel dependency.

Compared to the former version, the TCTF prolongs, in part, the period for accessing state aid until December 31, 2025, and enables EU Member States to grant aid in sectors considered strategic for transitioning the EU toward a net zero economy. (Note: These are the state aid rules that apply within the EU, for example, aid granted by EU member states to companies in the EU. With regard to the new Foreign Subsidies Regulation (FSR) that addresses subsidies granted by non-EU countries, please see: client report.

Support to Net Zero Technologies

The revised state aid rules contained in the TCTF establish that if the conditions set forth in the TCTF are met then strategic investments in equipment and components needed to produce green technologies are deemed compatible with the internal market and may receive state aid.

Eligible interventions include investments in the production of batteries, solar panels, wind turbines, heat pumps and electrolyzers, and similar energy-generating devices. Furthermore, aid that finances the production or recovery of critical raw materials used to produce green technologies is deemed compatible.

To support such interventions, EU Member States will establish national investment schemes with a set budget.[8] The amount of the aid in direct grants or other forms of tax relief varies according to the size of the receiving company and the region[9] in which the company is located, ranging from 15% of the eligible costs of the investment to 35%, for a maximum of €150 million and €350 million, respectively.[10]

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1 Communication, "A Green Deal Industrial Plan for the Net-Zero Age" (COM (2023) 62 final.

2 The US Inflation Reduction Act is a public subsidies scheme of US$360 billion, established with the objective of encouraging production in the US of technologies needed to accelerate the transition to a clean energy economy.

3 COM (2023) 161 final. Proposal for regulation on establishing a framework of measures for strengthening Europe's net zero technology products manufacturing ecosystem (Net Zero Industry Act).

4 COM (2023) 160 final. Proposal for regulation establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020.

5 Commission Regulation (EU) No 651/2014. The GBER exempts the interventions contained therein, from the requirement of prior notification to and approval by the Commission. This enables member states to grant the aid directly and informing the Commission only *ex-post facto*. In the context of the GDIP, the European Commission endorsed an amendment of the GBER to include investments in renewable energy and interventions aimed at industrial decarbonization (see articles 41, 43 and 48).

6 Commission Communication 2022/C 426/01 "Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia."

7 Commission Communication 2023/C 101/03.

8 To access the aid, beneficiaries must apply by December 31, 2025, providing the information required by the Annex II of the Communication 2023/C 101/03.

9 In 2022, the European Commission adopted revised EU guidelines on regional state aid, setting out the rules to support the economic development of companies based in disadvantaged areas in the EU. Accordingly, member states drew up regional aid maps to identify in which geographical areas companies can receive regional state aid (assisted areas) and at what level (aid intensity).

10 For large companies based in non-assisted areas, the aid can cover up to 15% of the eligible costs of the investment for a maximum of €150 million. While in the assisted areas, for large companies located in regions designated with a "c," the maximum is equal to 20% of the eligible costs of the investment for a maximum of €200 million, and in regions designated with an "a," 35% of the eligible costs of the investment for a maximum of €350 million.

Companies, under certain conditions, can benefit from individual aid for investments in green technologies. In these cases, the beneficiaries are not required to apply under a national funding scheme because the request is treated individually. The main condition for the aid to be considered compatible with EU state aid rules is that the beneficiary demonstrates that it could benefit from the same amount of the requested subsidy for an equivalent investment from a state based outside the European Economic Area (EEA). The aid will cover the amount of the subsidy that the company demonstrates it could have received from a third country jurisdiction outside the EEA. Further, the investment must be made entirely in an assisted area or in at least three EEA member states and two assisted areas.[11]

Renewable Energy Interventions and Decarbonization of the Industrial Sector

The European Commission has incorporated into the TCTF specific provisions to simplify access to state aid for investments in energy infrastructure and grid expansion. Eligible interventions include investments for producing renewable energies such as solar photovoltaic plants, onshore and offshore wind farms, hydropower installations, among others, and, include renewable hydrogen. Under certain conditions, investments in storage installations for renewable hydrogen, biofuels, bioliquids and biomass also can qualify.

Such aid, granted in the form of direct grants, loans, guarantees or tax relief, is allowed until December 31, 2025, and the investments must be completed generally within 36 months from the date they are granted. The maximum amount of the aid, if determined with a competitive bidding process, can cover up to 100% of the investment cost. If set by the member state without a public tender procedure, the aid can finance 45% of the investment, with a possible increase of 10% to 20% under certain conditions.

The TCTF considers, compatible with the internal market, aid aimed at financing decarbonization interventions in the industrial sector to reduce the dependence of European industry on fossil fuel imports. In these cases, aid up to 10% of the total investment or €200 million is envisaged. To be eligible, the investment must enable the beneficiary to reduce greenhouse gas emissions produced by its industrial site by at least 40%, compared with the pre-aid situation, and/or reduce energy consumption by at least 20%.

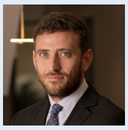
Conclusion

The revision of EU rules on state aid will allow access to public subsidies that could not otherwise have been granted to private companies or made available without prior assessment of the European Commission of their compatibility with the relevant EU competition rules. It therefore constitutes a major regulatory business opportunity for a range of companies operating within the EU if they operate in the above-mentioned industry sectors.

We can help companies interested in investing in green technologies, and in the production of clean energy, including hydrogen, in understanding how the new state aid regime works and how to structure any such public subsidy. We can help assess the eligibility of the investment and provide support during the public or individual selection procedures to access the aid.

Please do not hesitate to get in touch with us if you would like to discuss the changes to the EU state aid regime in more detail, including how it may provide a business opportunity in your specific case.

Authors



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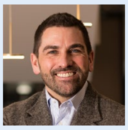

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11 Assisted regions are those ones contained in the regional aid maps referred to in footnote 9.

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