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## Facilitating European Production of Net-Zero Technologies: The Net-Zero Industry Act

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On March 16, 2023, the European Commission published a proposed [Net-Zero Industry Act](#) (the “NZIA”) – a new regulation intended to strengthen EU manufacturing of net-zero technologies.<sup>1</sup> Net-zero technologies under the NZIA are the final products, specific components and specific machinery primarily used for the production of renewable energy, electricity and heat storage, biomass, sustainable alternative fuel, carbon capture, and nuclear processing technologies, where such technology has been tested and demonstrated at scale.<sup>2</sup>

As with “strategic projects” under the proposed Critical Raw Materials Act (see our memo on that Act [here](#)), the core beneficiaries of the NZIA are so-called net-zero strategic projects (“NZSPs”). NZSPs are net-zero manufacturing projects (planned industrial facilities or extension or re-purposing of existing facilities that manufacture net-zero technologies) that are located in the EU and correspond to one of eight listed strategic net-zero technologies.<sup>3</sup> In addition, to qualify as an NZSP, a net-zero technology project would need to either contribute to the “technological and industrial resilience” of the EU’s energy system by reducing the EU’s reliance on third countries for component parts, or have a “positive impact” on the EU’s net-zero supply chain by contributing to its competitiveness and quality job creation (or both).<sup>4</sup>

The NZIA would set EU targets of: (i) at least 40% of the EU’s annual deployment needs for strategic net zero technologies to be manufactured in the EU by 2030<sup>5</sup>; and (ii) an annual injection capacity of 50 million tonnes of CO<sub>2</sub> by 2030.<sup>6</sup> Some critics have argued that the NZIA’s emphasis on setting objectives rather than imposing requirements or providing financial incentives will impede its ability to make a tangible difference – similar to the criticism levelled at the Critical Raw Materials Act.

### Key considerations

Investors, developers, manufacturers, suppliers and customers of net-zero technology projects should take note of the following key aspects of the proposed NZIA:

- **Net-zero technology projects would benefit from an expedited permitting procedure.** As well as requiring each Member State to designate a national “one-stop shop” for facilitating and coordinating permit-granting for net-zero technologies, the NZIA would impose time limits on processing permit applications by the relevant national authority. Net-zero technology manufacturing projects would wait no longer than 18 months to receive the requisite approvals

(reduced to 12 months for projects manufacturing less than 1GW per year), while net-zero strategic projects would wait a maximum of 12 months (reduced to nine months for projects manufacturing less than 1GW per year).<sup>7</sup>

- **EU Member States would be required to prioritize the development of NZSPs.** NZSPs would be afforded priority status under the NZIA, including by being treated “in the most rapid way possible” and being granted the “highest national significance possible”.<sup>8</sup> Member States would be required to leverage private investment in NZSPs by coordinating access to finance, assisting with reporting compliance and promoting public acceptance.<sup>9</sup>
- **Offshore carbon capture projects within the EU’s exclusive economic zone can qualify as NZSPs.** Unlike other NZSPs, which must be located within the EU, CO<sub>2</sub> storage projects located outside the EU but within one of its exclusive economic zones<sup>10</sup> or on the European continental shelf could qualify as NZSPs, provided they have applied for the requisite EU permit and contribute to the EU target of 50 million tonnes of annual injection capacity of CO<sub>2</sub> by 2030.<sup>11</sup>
- **NZSPs would receive advisory support from a dedicated governmental body.** The NZIA would establish the Net-Zero Europe Platform – an EU-level organization staffed by representatives from each Member State with a mandate to advise NZSPs on how to access private and public sources of funding, share best practices, and develop partnerships with industry alliances.
- **Public procurement auctions would be required to take a proposal’s sustainability contributions into account.** Methodologies for awarding public procurement contracts for strategic net-zero technologies would be required to include a proposal’s “sustainability and resilience contribution”, as measured by the degree to which the proposal (i) goes beyond minimum legislative environmental sustainability requirements; (ii) contributes to the integration of the European energy system; and (iii) reduces European dependence on non-domestic supply chains. Such contributions would be given a weight of between 15% and 30% of the overall award criteria.
- **Member States would be empowered to set up ‘regulatory sandboxes’.** The NZIA would allow Member States to establish schemes that enable companies to test innovative net-zero technologies in a controlled real-world environment at their own initiative.<sup>12</sup> Companies undertaking activities within a net-zero “regulatory sandbox” would remain liable for any harm done to third parties as a result of the activities tested.

The NZIA now needs to be discussed between the European Council and the European Parliament before its adoption and entry into force.

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ENDNOTES

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- <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.
- <sup>2</sup> The technology readiness level must be at least an 8. Technology readiness levels are a method of estimating the maturity of technologies, ranging from a scale of 1 to 9, adopted by the European Commission in 2010.
- <sup>3</sup> The eight strategic net-zero technologies listed in the Annex are: solar photovoltaic and solar thermal technologies, onshore and offshore wind, battery/storage technologies, heat pumps and geothermal energy, electrolysers and fuel cells, sustainable biogas/biomethane technologies, Carbon Capture and Storage (CCS), and grid technologies.
- <sup>4</sup> Article 10, NZIA.
- <sup>5</sup> Article 1(2)(a), NZIA.
- <sup>6</sup> Article 16, NZIA.
- <sup>7</sup> Article 6, NZIA; Article 13, NZIA.
- <sup>8</sup> Article 12, NZIA.
- <sup>9</sup> Article 14, NZIA.
- <sup>10</sup> The sea area up to 200 nautical miles off the coast of the European continental shelf.
- <sup>11</sup> Article 12(2), NZIA.
- <sup>12</sup> Article 2, NZIA.

Questions regarding the matters discussed in this publication may be directed to [Max Birke](#), [Craig Jones](#) or [Sam Saunders](#), or to any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. Additional S&C resources about energy transition matters may be found [here](#).

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