Green Deal Industrial Plan: The EU's Response to the U.S. Inflation Reduction Act

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At the beginning of February, the European Commission (Commission) presented its Green Deal Industrial Plan (GDIP), a package of measures designed to help the EU industry to make progress in the transition to climate neutrality and strengthen its position in global competition.

The plan is widely seen as the Commission's proposed response to the recently passed U.S. Inflation Reduction Act, intended to provide incentives to shift production of certain goods to the U.S. and valued at about USD 360 billion. Similar stimulus programs are currently being discussed or have already been implemented in China, Japan, India, the United Kingdom and Canada. In order to avert disadvantages for the EU economy, the Green Deal Industrial Plan envisages industry policy measures in four 'pillars'. Pillars 1 and 2 lay out a number of stimulating adjustments in the areas of regulation and State aid law, while pillars 3 and 4 aim to foster the EU labour market and external trade relations.

Slimmer regulation, quicker permitting

In its first pillar, the GDIP intends to simplify regulatory frameworks. To that end, a *Net-Zero Industry Act* would identify goals for production capacity of key technologies (such as batteries, windmills, heat pumps, solar panels, electrolysers, carbon capture and storage technologies) by 2030 and facilitate their achievement by accelerating permitting procedures. This is to be realised by defining, in EU law directly binding to the Member States, specific time limits for different stages of permitting procedures and increasing Member States' administrative efficiency by introducing 'one-stop-shop' points of contact for investors and industrial stakeholders through the entire permitting process.

Additionally, the GDIP emphasizes the importance of public procurement and concessions to further stimulate the demand for net-zero products at large scale. In the Commission's view, these instruments promote a more predictable and uniform demand for net-zero solutions and allow public authorities to set out ambitious sustainability requirements. In this regard, the Commission plans to define sustainability characteristics and possible requirements for net-zero products.

Further legislative action in the first pillar includes the introduction of a 'Critical Raw Materials Act' to guarantee access to essential materials, such as rare earths, by fostering extraction, processing and recycling capabilities in the EU and investing in relevant R&D. Further, the Commission intends to revise the electricity market design to provide consumers with the advantage of lower costs for renewable energy, i.a. by relying on long-term price contracts.

Additional and faster public funding to incentivize private sector investment

With the second pillar, the Commission intends to strengthen public funding for the green transformation of the EU's industry.

Firstly, the GDIP includes a relaxation of State aid rules for investments in green transition. To that end, the idea is to transform the existing Temporary Crisis Framework (TCF) that was adopted following Russia's aggression against Ukraine to remedy negative economic effects caused by the war into a *Temporary Crisis and Transition Framework (TCTF)*. This would entail a further simplification of the granting of aid for renewable energy deployments and for efforts to decarbonise industrial processes, e.g. by extending the provisions to all renewable technologies or by eliminating the need for open tenders for less mature technologies. The Commission further intends to allow for the exceptional granting of higher amounts of aid than would otherwise be possible in cases where this is needed to match aid received by a third country competitor of a European undertaking in the field of strategic net-zero technologies. This concept complements the recently enacted Foreign Subsidies Regulation which likewise addresses distortions of the level playing field in the EU internal market caused by third country subsidies. The TCTF would also enable more targeted aid for major new production projects in strategic net-zero value chains. The measures are supposed to target sectors where a relocation risk to third countries has been identified.

Furthermore, it is envisaged to increase the notification thresholds for State aid in key sectors (e.g. hydrogen, carbon capture and storage, zero-emission vehicles and energy performance of buildings) by revising the Green Deal General Block Exemption Regulation. State aid that does not exceed the increased thresholds can be awarded by Member States without prior notification and approval by the Commission. Additionally, measures are planned to speed up and simplify the approval of projects related to Important Projects of Common European Interest (IPCEI).

Secondly, the Commission intends to continue to contribute EU funds to targeted and swift funding of the EU's net-zero industry. The use of EU funds expressly aims to avoid disadvantaging Member States with less 'deep pockets', thereby addressing a concern voiced by many Member States in view of Germany's and France's perceived generous responses to the energy and COVID crises. For the short term, the GDIP proposes facilitation of access to existing programmes. Resources from the originally pandemic-related Recovery and Resilience Fund (RRF), the REPowerEU (the EU's first response to the energy crisis ensuing Russia's aggression), InvestEU and the Innovation Fund are to be increased and combined, and the relevant granting is to be streamlined for the GDIP's purposes. In the mid-term, the Commission envisages installing a 'European Sovereignty Fund' to structurally address investment needs in the Member States.

Global cooperation for resilient supply chains

While the third pillar concerns the proposed introduction of several labour market policy measures, the measures indicated in the fourth pillar relate to international trade policy. The Commission stresses that trade openness is an essential element of the strategy to maintain the EU's position as a global leader in net-zero technologies. In light of this, it intends to re-energize efforts to develop a network of free trade agreements and other forms of cooperation with global partners. The Commission announces to develop a number of new initiatives in this regard, such as the Critical Raw Materials Club, ensuring global security of supply by bringing together consumers of raw materials and resource-rich countries.

Finally, the Commission stresses its determination to protect the EU from measures perceived as unfair trade in the clean tech sector by deploying various trade defense instruments (TDI). While the GDIP does not foresee new measures, the Commission commits to make full use of existing tools available under the Foreign Subsidies Regulation. It will also promote reciprocity for access to public procurement markets, including by deploying the International Procurement Instrument. The Commission further calls on Member States to rigorously implement the EU framework for screening of foreign direct investments.

No 'done deal' yet

While the U.S. Inflation Reduction Act has already been in force since summer 2022, full implementation of the GDIP is not a given at this point due to the complex institutional structure of the EU. The 21-page draft communication presented by the Commission is expressly intended to serve as a basis for discussion at the meeting of EU leaders in Brussels on 9 and 10 February 2023. Parts of the planned measures cannot become reality without passing formal EU and/or national legislative procedures. In particular, the creation of the 'Sovereignty Fund' from joint resources is by no means a foregone conclusion. However, especially in the area of State aid law, the Commission has considerable own powers, so it is to be expected that the announced relaxation of State aid law rules can be implemented promptly. This would provide Member States with considerably greater room for manoeuvre in granting public funding not only for research and development but also for industrial production. The Commission can also use the existing instruments to create a level playing for EU companies, such as the Foreign Subsidies Regulation and the International Procurement Instrument, without further implementation.

BLOMSTEIN will continue to monitor the developments regarding the Green Deal Industrial Plan. If you have any questions on the topic, Max Klasse, Ramona Ader and the entire BLOMSTEIN team will be happy to advise you.