



GLOBAL  
EUROPE



# Can the Leopard Change Its Spots?

## Competitiveness, Industrial Policy, and State Aid in the European Single Market

By Dylan Marshall | April 2023

## Introduction

In a year which marks the thirtieth anniversary of the European Single Market, deliberations on European competitiveness in the global context once again were a significant feature on the agenda of the European Council on 23-24 March 2023, aimed at further refining the outcomes of the previous European Council on 9-10 February 2023.

The publication of a strategy for the EU's [Green Deal Industrial Plan for the Net-Zero Age](#) on 1 February 2023 was the catalyst for Europe-wide discussions on how to best respond to the challenges posed by the US Inflation Reduction Act (IRA) and China's non-market policies. These were characterised by opposing views about promoting free trade versus ensuring the competitiveness of the Single Market, pursuing EU-led rather than Member State-led action, and favouring existing EU funding instruments over new joint debt.

Charles Michel, President of the European Council, commented that China poses the real challenge for the EU, hence the EU's Global Gateway programme was seen as a counterbalance to the Chinese Belt and Road Initiative. Visits by French President, Emmanuel Macron, and European Commission President, Ursula von der Leyen, to the US have led to the partial alleviation of concerns about diverging transatlantic economic and industrial policies, a pledge to revise the IRA,<sup>1</sup> and a commitment to further EU and US coordination.<sup>2</sup>

However, in order to protect European industry and the Single Market from disruptive practices by third countries, the EU devised a series of both offensive and defensive measures to address these challenges, which were outlined in an [IIEA Explainer on Strategic Autonomy and the Single Market](#).

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1. Holland, S., Rose, M. and Mason, J. (2022). Biden, Macron vow unity on Ukraine and move to end subsidy tensions. [online] Reuters. Available at: <https://www.reuters.com/world/state-visit-biden-macron-face-dispute-over-american-subsidies-2022-12-01/> [Accessed 22 Mar. 2023].

2. Lau, S., Kijewski, L., Barigazzi, J., Lynch, S., Von Der Burchard, H., Ward, A. and Palmer, D. (2023). Sanctions on China loom large as von der Leyen to meet Biden in US. [online] POLITICO Europe. Available at: <https://www.politico.eu/article/ursula-von-der-leyen-joe-biden-meeting-washington-march-2023/> [Accessed 22 Mar. 2023].

<b>SINGLE MARKET MEASURES FOR OPEN STRATEGIC AUTONOMY</b>			
	<b>Proactive</b>	<b>Reactive</b>	<b>Proactive and Reactive</b>
<b>LEGISLATIVE PROGRAMMES</b>	<ul style="list-style-type: none"> <li>• Export Control Regulation</li> <li>• Enforcement Regulation</li> <li>• Trade Mirror Clauses</li> </ul>	<ul style="list-style-type: none"> <li>• Single Market Emergency Instrument</li> <li>• Anti-Coercion Instrument</li> <li>• Foreign Direct Investment Screening Regulation</li> <li>• Anti-Dumping, Anti-Subsidies, Safeguards</li> </ul>	<ul style="list-style-type: none"> <li>• Carbon Border Adjustment Mechanism (CBAM)</li> <li>• International Procurement Instrument</li> </ul>
	<b>Proactive</b>	<b>Reactive</b>	<b>Proactive and Reactive</b>
<b>INVESTMENT PROGRAMMES</b>		<ul style="list-style-type: none"> <li>• European Chips Act</li> <li>• Temporary Crisis and Transition Framework</li> </ul>	<ul style="list-style-type: none"> <li>• Industrial Alliances</li> <li>• Important Projects of Common European Interest (IPCEIs)</li> <li>• REPowerEU</li> </ul>
	<b>Proactive</b>	<b>Reactive</b>	<b>Proactive and Reactive</b>
<b>STRATEGIC PARTNERSHIPS</b>	<ul style="list-style-type: none"> <li>• Global Gateway</li> <li>• EU-US Trade and Technology Council (TTC)</li> </ul>		

On 16 March 2023, the Commission unveiled proposals for a multifaced regulatory framework, the **Net-Zero Industry Act**, which includes new measures to support strategic technologies in order to ensure that 40% of Europe's clean-tech is manufactured domestically within the Single Market by 2030.

The **Critical Raw Materials Act** aims to strengthen all stages of the European critical raw materials value chain, diversify the EU's imports to reduce strategic dependencies, improve the EU's capacity to monitor and mitigate risks to the supply of critical raw materials, and improve circularity and sustainability. A proposal for a regulation to implement the Critical Raw Materials Act is included in the Green Deal Industrial Plan for the Net-Zero Age.

A **Temporary Crisis and Transition Framework** broadens the scope for Member States to support the competitiveness of European industry and the revised **General Block Exemption Regulation** eases conditions to free projects geared towards the green transition from prior notification and approval requirements before receiving state aid. Additionally, the Commission unveiled plans for the establishment of a **Green Hydrogen Bank** to support investment in sustainable green hydrogen.

This paper seeks to analyse the new regulatory framework which aims to achieve open strategic autonomy in an increasingly competitive and hostile global trade environment, to maintain open free trade with trusted partners, and to advance the green and technological capabilities of the EU Single Market.

## Analysis of the Net-Zero Industry Act

As indicated above, the [European Commission published its proposal for the Net-Zero Industry Act](#) in the form of a Regulation.<sup>3</sup> The objective of the Net-Zero Industry Act is that 40% of Europe's demand for clean-tech is produced domestically within the EU by 2030.<sup>4</sup> The Act aims at streamlining the process of deploying strategic technologies through: (i) simplifying the permit-granting processes;<sup>5</sup> (ii) reducing administrative burdens in setting-up projects;<sup>6</sup> (iii) facilitating access to markets;<sup>7</sup> (iv) regulating supply chains;<sup>8</sup> and (v) ensuring the availability of a highly skilled workforce.<sup>9</sup>

The proposed Act gives priority to **Net-Zero Strategic Projects**, which are deemed essential for reinforcing the resilience and competitiveness of EU industry. These strategic projects will benefit from streamlined administrative and permit-related procedures. 8 strategic net-zero technologies are identified to benefit from the Net-Zero Industry Act.<sup>10</sup> They are:

- solar photovoltaic and solar thermal technologies
- onshore wind and offshore renewable technologies
- battery/storage technologies

3. COM(2023) 161 final 2023/0081 (COD).

4. COM(2023) 161 final 2023/0081 (COD), art 1.2.

5. COM(2023) 161 final 2023/0081 (COD), chap II.I.

6. COM(2023) 161 final 2023/0081 (COD), chap II and chap VI.

7. COM(2023) 161 final 2023/0081 (COD), chap IV.

8. COM(2023) 161 final 2023/0081 (COD), chap VII.

9. COM(2023) 161 final 2023/0081 (COD), chap V.

10. COM(2023) 161 final 2023/0081 (COD), annex.

- heat pumps and geothermal energy technologies
- electrolysers and fuels cells
- sustainable biogas/biomethane technologies
- carbon capture and storage (CCS) technologies
- grid technologies

It is interesting to note that nuclear-related technologies were excluded from the list of strategic green net-zero technologies. Prior to the March meeting of the European Council, it was reported that France was adamant about the inclusion of nuclear technologies in the Act and that it would lead a 12-country pro-nuclear alliance in the European Council. This, in turn, was confronted by a 7-country anti-nuclear coalition although the consequences of this clash, in the context of the Net-Zero Industry Act, have not been subsequently reported on.<sup>11</sup> The inclusion of nuclear in the Renewable Energy Directive by the Energy Council on 30 March 2023 does potentially signal that the final version of the Net-Zero Industry Act may have at least tacit acceptance of a narrow use of these technologies for the generation of low-carbon hydrogen with electricity from nuclear power plants as part of separate targets for renewable hydrogen used by industry.<sup>12</sup>

The Act seeks to stimulate innovation through the flexibility of [regulatory sandboxes](#).<sup>13</sup> These may be set up by the Member States, on their own initiative, to test innovative net-zero technologies in controlled **real-world environments** for a **limited time** and in a **limited part of a sector**. While these sandboxes are designed to stimulate innovation, they allow for flexible regulatory supervision for new products and technologies which are not currently fully compliant with existing legal and regulatory frameworks. As outlined in the proposed Regulation, small- and medium-sized enterprises (SMEs) will be given priority access to these regulatory sandboxes.<sup>14</sup> This reflects the priority to support SMEs throughout the Act. Considering that SMEs make up over 99% of Irish businesses and generate 70% of Irish jobs,<sup>15</sup> the Act's focus on SMEs should benefit Irish economic growth if effectively exploited.

Further, the proposed Act seeks to ease access to markets by requiring public authorities to consider **sustainability and resilience criteria** for net-zero technologies in **public procurement and auctions**. Specifically, the granting authorities in Member States must give sustainability and resilience a weight between 15% and 30% in their award criteria.<sup>16</sup> This could have implications for Chinese imports to the EU.

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11. Leali, G. and Jack, V. (2023). Defiant France to continue push for 'all' nuclear tech in EU Net-Zero Industry Act. [online] POLITICO Europe. Available at: <https://www.politico.eu/article/defiant-france-to-continue-push-for-all-nuclear-tech-in-eu-net-zero-industry-act/> [Accessed 20 Mar. 2023]; Van Gaal, W. (2023). France seeks 'nuclear alliance' at EU energy meeting. [online] EUObserver. Available at: <https://euobserver.com/green-economy/156759> [Accessed 21 Mar. 2023].

12. Gavin, G., and Jack, V. (2023) France drops pink atomic bomb on EU green energy talks. [online] POLITICO Europe. <https://www.politico.eu/article/france-pink-atomic-bomb-eu-green-energy-deal/%20> [Accessed 3 Apr. 2023]

13. COM(2023) 161 final 2023/0081 (COD), arts 26-27.

14. COM(2023) 161 final 2023/0081 (COD), art 27.

15. Ireland's SME Test: The "Think Small First" Principle. [online] Department of Enterprise, Trade and Employment. Available at: <https://enterprise.gov.ie/en/publications/publication-files/ireland-s-sme-test.pdf> [Accessed 29 Mar. 2023], p 3.

16. COM(2023) 161 final 2023/0081 (COD), art 19(2)(d).

There is also a strong focus on ensuring that opportunities are available to re-skill and up-skill European workers so that they can be deployed within strategic industries essential for a competitive and successful green economy in the face of demographic challenges. The Act outlines the framework for **Net-Zero Industry Academies** across the Union and the standardisation of professional qualifications achieved in these institutions.<sup>17</sup> This requirement seems appropriate, as 2023 marks the [European Year of Skills](#). Ireland is well placed to take advantage of the double digital and green transition due to its highly skilled workforce. The Net-Zero Industry Act, with its focus on skills, as well as the relaxation of state aid rules for policies aimed at upskilling, provides Irish authorities with opportunities to fill existing skills gaps in the Irish labour force.

Additionally, a Net-Zero Europe Platform will be established to assist in coordinating action and exchanging information to ensure sound implementation of the Act. This proposed body will be chaired by the Commission representative and composed of a high-level representative from each Member State. This Net-Zero Europe Platform is envisioned to support investment by identifying **financial needs, bottlenecks, and best practices** for strategic projects across the EU. It will also foster contacts across Europe's net-zero sectors, making particular use of existing industrial alliances.<sup>18</sup>

Industry response has varied. The Financial Times reported that executives from Solvay, Merck, and Dow were somewhat unimpressed with the Commission's proposal.<sup>19</sup> While admittedly these are just three industry leaders, they may signal a wider trend across key actors in European industry. They were collectively of the opinion that the Net-Zero Industry Act, together with Europe's relatively burdensome regulatory framework vis-à-vis the US, will not be sufficient to compete with the benefits provided under the US' IRA.<sup>20</sup> On the other hand, leaders of the EU's battery industry have lauded the Commission's proposal for the Net-Zero Industry Act.<sup>21</sup>

The European Council recognised that the increased intra-EU trade as a result of the Single Market has "provided a springboard for European businesses to enter global markets."<sup>22</sup> The European Roundtable of Industry (ERT) concurred, emphasising that the best way to ensure long-term European competitiveness is the completion of the Single Market.<sup>23</sup> This is particularly urgent considering the great challenges (and opportunities) posed by decarbonisation, digitalisation, and a changing geopolitical world order. The ERT underlined this by pointing to the need for industrial policy and the Single Market to complement each other with European solutions and limited targeted interventions.<sup>24</sup>

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17. COM(2023) 161 final 2023/0081 (COD), art 23.

18. COM(2023) 161 final 2023/0081 (COD), art 23.

19. Hollinger, P., Cheng, T-F. and Bounds, A. (2023). EU industrialists attack Europe's counter to Biden green bonanza. [online] Financial Times. Available at: <https://www.ft.com/content/6e6d71a1-a94b-45c9-ad5c-81f32e886301> [Accessed 21 Mar. 2023].

20. Ibid.

21. Milne, R. (2023). European battery makers welcome EU response to US subsidies. [online] Financial Times. Available at: <https://www.ft.com/content/c0f6150f-e91f-431a-b13d-f6f6e9fb9fd4> [Accessed 30 Mar. 2023].

22. EUCO 4/23, p 5.

23. Renewing the dynamic of European integration: Single Market Stories by Business Leaders. [online] European Round Table for Industry. Available at: [https://ert.eu/wp-content/uploads/2021/12/ERT-Single-Market-Stories\\_WEB-low-res.pdf](https://ert.eu/wp-content/uploads/2021/12/ERT-Single-Market-Stories_WEB-low-res.pdf) [Accessed 28 Mar. 2023], p 17.

24. Ibid, p 17.

## Analysis of the Critical Raw Materials Act

On 16 March 2023, the [European Commission also published its proposal for the Critical Raw Materials Act](#).<sup>25</sup> The proposed Regulation will establish a regulatory framework to increase the Union's open strategic autonomy and security by ensuring that 40% of the critical raw materials consumed in the EU are processed within the Single Market. The proposed Regulation sets several important targets for EU Member States to meet by 2030 aiming to strengthen the circularity of critical raw material supply chains.<sup>26</sup> It is structured in a similar manner to the Net-Zero Industry Act and establishes an oversight body similar to that contained within said Act.<sup>27</sup>

Ebba Busch, Minister for Energy, Business, and Industry of Sweden, stated that although “the EU uses 25% of the global production of metals, it produces only 3–4% of them. Recycling, reuse, and other circular methods are important, but will not be sufficient to meet the growing demand.”<sup>28</sup> This highlights the need to assess external actors when considering critical raw materials. In doing so, the Act sets an important benchmark that **no more than 65% of the EU's annual consumption of a strategic critical raw material may originate from a single third country**. When presenting the proposed Regulation, Commissioner Breton underlined the importance of this: “Turkey provides 99% of the EU's boron. 97% of our magnesium comes from China. That's all well and good, but we have to take action.”<sup>29</sup> These critical raw materials will be essential for the dual digital and green transitions as well as for the defence and space industries. The call for business to de-risk their exposure to China – which supplies 90% of some essential parts used in solar panels, wind turbines, and electric vehicles – is to prevent the EU from moving from dependence on Russian gas to Chinese clean tech. This need to de-risk, rather than de-couple, Europe's relations with China was recently highlighted by Commission President von der Leyen.<sup>30</sup>

In line with the Union's desire for open strategic autonomy, the Communication states that the EU will diversify its supply through mutually beneficial **strategic partnerships** based on shared principles and the deployment of investments, including in skills relevant to the work-force in critical raw materials supply chains, provided for under the [Global Gateway initiative](#).<sup>31</sup> Externally, the Global Gateway will

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25. COM(2023) 160 final 2023/0079 (COD).

26. These are that the EU's domestic capacities meet: at least 10% of the EU's annual consumption for extraction; at least 40% of the EU's annual consumption for processing; at least 15% of the EU's annual consumption for recycling; and no more than 65% of the EU's annual consumption from a single third country.

27. The European Critical Raw Materials Board will be charged with overseeing the implementation of the Critical Raw Materials Act and providing logistical and technical support when requested to do so.

28. Ministerial statement on proposed European Critical Raw Materials Act. [online] Swedish Presidency of the Council of the European Union. Available at: <https://swedish-presidency.consilium.europa.eu/en/news/ministerial-statement-on-proposed-european-critical-raw-materials-act/> [Accessed 21 Mar. 2023].

29. Quoted in: Van Gaal, W. (2023). EU launches critical raw materials act. [online] EUObserver. Available at: <https://euobserver.com/green-economy/156838> [Accessed 20 Mar. 2023].

30. Gillespie, P. (2023) The EU must derisk its changing relationship with China. [online] The Irish Times. Available at: <https://www.irishtimes.com/opinion/2023/04/01/paul-gillespie-the-eu-must-derisk-its-changing-relationship-with-china/> [Accessed 3 Apr. 2023].

31. These shared principles include the environmental protection, respect for human and labour rights, the use of transparent business practices, and adherence to the rule of law.

also be used as a vehicle to assist partner countries in developing their own extraction and processing capacities, including infrastructure and skills development.

For a resource-poor Member State, like Ireland, the Critical Raw Materials Act may prove essential for continued economic competitiveness, growth, and prosperity over the coming decades. Many emerging technologies rely on critical raw materials and other resources that Ireland simply cannot source in adequate amounts domestically or from the EU Single Market. With its strong tech industry, the development of diversified and reliable supply chains as well as strategic partnerships with third countries for the secure access of these materials will be essential for Ireland's attractiveness as an investment destination, its continued economic development, as well as an expansion of existing and new industries. The importance of Ireland securing a diversified supply of these materials and technologies has been previously explored in an IIEA [blog post on semi-conductors](#) and [panel discussion on the European Chips Act](#).

## Temporary Crisis and Transition Framework

A Temporary Crisis Framework was enacted by the EU on 23 March 2022 to shield European business and industry from the most severe economic fallout of the illegal invasion of Ukraine by the Russian Federation.<sup>32</sup> Prior to the introduction of the Temporary Crisis Framework, **in 2021, national state aid totalled €320.22 billion across all Member States.**<sup>33</sup> **Since the revision of state aid rules in March 2022, €672 billion in state aid has been spent.** 96.6% of this has been used in just 10 Member States – with France and Germany accounting for 77%, or €518 billion.<sup>34</sup> The majority of this went to actors within nationally-important energy-intensive industries which most acutely felt the consequences of the war in Ukraine such as the air transport, car production, construction, chemicals, and steel industries. Additionally, a significant portion of the state aid awarded in 2022 was allocated to cross-sectoral research and development projects – the results of which could have a positive spill-over downstream in other Member States.

While Ireland saw the largest growth in industrial output between October 2019 and October 2021,<sup>35</sup> the revisions of state aid rules pose potential challenges. First, Ireland, like other small states, does not possess the same financial resources as larger Member States, particularly France or Germany. While healthy French and German economies are essential for a healthy EU economy, uncoordinated national initiatives have the potential to undermine fair competition within the Single Market – to the detriment of Member States like Ireland. It has been noted, based on industrial output statistics, that

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32. Temporary Crisis and Transition Framework. [online] European Commission. Available at: [https://competition-policy.ec.europa.eu/state-aid/ukraine\\_en](https://competition-policy.ec.europa.eu/state-aid/ukraine_en) [Accessed 16 Mar. 2023].

33. Scoreboard. [online] European Commission. Available at: [https://competition-policy.ec.europa.eu/state-aid/scoreboard\\_en](https://competition-policy.ec.europa.eu/state-aid/scoreboard_en) [Accessed 16 Mar. 2023].

34. (2023). Aiuti di Stato, ecco la classifica Ue: Germania prima, Italia terza. [online] Il Sole 24 ORE. Available at: <https://www.ilssole24ore.com/art/ecco-classifica-ue-aiuti-stato-germania-prima-italia-terza-AEcBVgkC-> [Accessed 16 Mar. 2023].

35. Allenbach-Amman, J. (2023). Risking death by a thousand subsidies. [online] EURACTIV. Available at: <https://www.euractiv.com/section/economy-jobs/news/risking-death-by-a-thousand-subsidies/> [Accessed 29 Mar. 2023].



this aid seems to be based more on bargaining power and economic resources within Member States than on objective economic criteria.<sup>36</sup>

While Ireland favours loosening state aid rules for Important Projects of Common European Interest (IPCEIs), the Government has stressed the need for evidence-based policy grounded in analysis of their impact on industry and the Single Market. The potential for Ireland to actively participate in IPCEIs, with the pooled resources of a selection of Member States, could allow Ireland to stay at the cutting edge of technological and research developments within the Union. This is particularly important for a Member State like Ireland – with growing energy demand as well as strong digital, pharmaceutical, and tech industries.

The disparity of available funds and past action has caused several member states to worry about the integrity of the Single Market with two separate coalitions of Member States voicing their concerns through joint letters and non-papers on the subject.<sup>37</sup> These dissenting voices, which Ireland has been a part of on both occasions, have been important in shaping the debate on the relaxation of state aid rules, underlining the importance of the fair and proper functioning of the EU's Single Market. Ireland's engagement in coordinating inputs into discussions on the US IRA and on the TCTF helped shape the conversations at the European Council in March 2023. Ireland has consistently emphasised the importance of completing the Single Market, particularly in services, of maintaining a level playing field between Member States, and of limiting flexibility in the application of state aid rules when fashioning an EU response to the IRA.

In March 2023, the [European Commission revised the Temporary Crisis Framework, transforming it into the Temporary Crisis and Transition Framework \(TCTF\)](#)<sup>38</sup> and prolonged the deadline for the revised rules until 31 December 2025 instead of the originally agreed 31 December 2022. According to Margrethe Vestager, Executive Vice President of the European Commission for A Europe Fit for the Digital Age, the TCTF increases the “speed, simplicity, and scope” that Member States can act to support the competitiveness of European industry.<sup>39</sup> In her view, the important factor was that “the TCTF strikes the right balance between enabling Member States to support much-needed investments and preserving the integrity of the internal market.”<sup>40</sup>

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36. Markis, S. (2023) Temporary Crisis and Transition Framework: Dealing with Crisis and Transitioning to a Net-Zero Economy – But At What Cost?. [online] Kluwer Competition Law Blog. Available at: <https://competitionlawblog.kluwercompetitionlaw.com/2023/04/04/temporary-crisis-and-transition-framework-dealing-with-crisis-and-transitioning-to-a-net-zero-economy-but-at-what-cost/%20> [Accessed 3 Apr. 2023].

37. Stotlon, S., Moens, B. and Lombardi, P. (2023). ‘Like Marx on steroids:’ EU governments slam subsidy plan. [online] POLITICO Europe. Available at: <https://www.politico.eu/article/like-marx-on-steroids-eu-governments-protest-state-aid-push/> [Accessed 16 Mar. 2023].

38. COM(2023) 1711 final.

39. Blogpost by EVP Margrethe Vestager to present Europe's new Temporary Crisis and Transition Framework. [online] European Commission. Available at: [https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/blog-post-evp-margrethe-vestager-present-europes-new-temporary-crisis-and-transition-framework\\_en](https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/blog-post-evp-margrethe-vestager-present-europes-new-temporary-crisis-and-transition-framework_en) [Accessed 16 Mar. 2023].

40. Ibid.

The revised TCTF provides for investment support in key sectors, reflecting the importance of the **Net-Zero Industry Act** and the **Critical Raw Materials Act**. On the one hand, the framework focuses investment of state aid in manufacturing **key components and strategic equipment, specifically batteries, solar panels, wind turbines, heat-pumps, electrolysers, and carbon capture usage and storage**.<sup>41</sup> On the other hand, the TCTF permits increased levels of state aid in the **production and recycling of critical raw materials**.<sup>42</sup>

There are a number of important aspects included in the TCTF. Under this framework, the levels of state aid are dependent on the geographic location and size of the recipient of the support. Specifically, investments targeted at disadvantaged regions as well as those supporting small- and medium-sized enterprises can enjoy higher support. Furthermore, higher levels of support to corporations are allowed if such aid is provided through tax breaks, loans, or guarantees.

The TCTF also has provisions focused on furthering cohesion policy. This can be triggered when Member States seek to match foreign subsidies when faced with investments which could lead to companies potentially exiting the Single Market due to aid available in other jurisdictions. In these circumstances, the upper limit of state aid is raised from the standard €150 million up to €350 million.<sup>43</sup> To legally deploy state aid in these specific instances, several conditions must be met: projects must deploy state-of-the-art production methods from an emissions viewpoint, the project must be spread across at least three Member States, and a significant part of the overall investment in at least [two defined disadvantaged regions](#).<sup>44</sup> While this has been seen as a response to competition from China and the US, Member States have underlined the importance of resisting the temptation of a subsidy race that will burden the taxpayer and negatively affect market dynamics.

To protect the integrity of the Single Market from the increased frequency, funding, and sectoral scope of national state aid; the Framework contains an overarching condition that Member States must verify beforehand that a subsidy or support will not trigger the relocation of economic activity between Member States in the Single Market.<sup>45</sup> While this is not an emergency brake on the widespread use of state aid, it does go some way towards protecting against any excessive potential fallouts of differentiated state aid policies in the Single Market.

## Revised General Block Exemption Regulation

The General Block Exemption Regulation (GBER) is a key weapon in the chest of the European Commission's power to regulate state aid in the European Union. Measures that fall within the ambit of the GBER are, by their nature, assumed to be compliant with the European Treaties. As such, these actions are excluded from the general requirement to notify and obtain approval from the European

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41. COM(2023) 1711 final, para 85(a)(i).

42. COM(2023) 1711 final, para 85(a)(iii).

43. COM(2023) 1711 final, para 85(g)(ii)

44. Regional Aid maps 2022-2027. [online] European Commission. Available at: [https://competition-policy.ec.europa.eu/state-aid/legislation/modernisation/regional-aid/maps-2022-2027\\_en](https://competition-policy.ec.europa.eu/state-aid/legislation/modernisation/regional-aid/maps-2022-2027_en) [Accessed 16 Mar. 2023].

45. COM(2023) 1711 final, para 51, para 85(j).

Commission before the provision of state aid and Member States are only required to notify the European Commission of support *ex post facto*.<sup>46</sup>

On 9 March 2023, the [European Commission revised the GBER](#) to facilitate the delivery of state aid in the area of **environmental protection and energy**, such as to accelerate the deployment of renewable energy, to facilitate investments in green hydrogen technologies, to increase energy efficiency, to regulate energy prices, and to stimulate research, development and innovation.<sup>47</sup> It also contains an extension of the possibilities for **training and reskilling** via an increase of the notification threshold for aid in this sector to **€3 million**.<sup>48</sup> This revision of the GBER also provided for the Regulation's extension until 31 December 2026, beyond the 31 December 2023 date given in a previous amendment.<sup>49</sup>

## Funding Europe's Green Industrial Revolution

There is a dichotomy between harnessing national funding from the Member States and upholding the integrity of the Single Market. On the other hand, the EU has somewhat limited resources at its disposal to support the far-reaching industrial policy outlined above and there is a divergence between Member States on the question of further joint borrowing to finance it.

On 3 October 2022; Thierry Breton, European Commissioner for the Internal Market, and Paolo Gentiloni, European Commissioner for Economy, co-authored a letter highlighting the need for a joint EU approach to transform the European economy – which would involve acquiring joint debt to support Europe's competitiveness.<sup>50</sup> Notwithstanding this previous assertion; on 15 March 2023, Commissioner Breton stated that joint borrowing by the Member States was no longer a priority due to the political priorities and sensitivities of different Member States.<sup>51</sup> France, previously regarded as one of the main Member States pushing for increased joint borrowing, has also signalled that it no longer sees joint borrowing as a priority.<sup>52</sup>

Instead, Commissioner Breton noted that reaching a political agreement between Member States would be more likely through a reallocation of funding during the mid-point review process of the Multi-Annual Financial Framework (MFF), the EU's seven-year budget, which is due to take place in

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46. State aid: Commission amends General Block Exemption rules to further facilitate and speed up green and digital transition. [online] European Commission. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_1523](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1523) [Accessed 16 Mar. 2023].

47. Ibid.

48. COM(2023) 1712 final, p 1.

49. COM(2023) 1712 final, p 1.

50. Breton, T. and Gentiloni, P. (2022). Opinion: Germany's latest response to energy crisis raises questions. [online] The Irish Times. Available at: <https://www.irishtimes.com/opinion/2022/10/03/germanys-latest-response-to-energy-crisis-raises-questions/> [Accessed 20 Mar. 2023]. <https://www.irishtimes.com/opinion/2022/10/03/germanys-latest-response-to-energy-crisis-raises-questions/>

51. Bourgerie-Gonse, T. (2023). EU's Breton: Joint debt for green transition no longer a priority. [online] EURACTIV. Available at: <https://www.euractiv.com/section/economy-jobs/news/eus-breton-joint-debt-for-green-transition-no-longer-a-priority/> [Accessed 16 Mar. 2023].

52. Ibid.

July 2023 under the auspices of the Spanish Presidency of the Council of the EU.<sup>53</sup> Nonetheless, it has been stated that a number of Member States are hesitant to cast the net too wide for renegotiating the allocation of funds under the MFF.

Commissioner Breton did not completely rule out the possibility of joint EU borrowing in the medium-to-long term, noting that such an approach would not be of primary concern until all the NextGenerationEU Fund has been fully mobilised.<sup>54</sup> Several already existing EU funding instruments have been identified by the European Commission for use in support of the Green Deal Industrial Plan for the Net-Zero Age.<sup>55</sup>

There has been a recognition amongst Member States that a number of these financial and funding instruments have proven to be overly rigid, restricting Member States' need to invest in the aftermath of unprecedented challenges of the COVID-19 pandemic and the illegal Russian invasion of Ukraine. Notwithstanding this, the hesitation to assume new joint debt remains, with Member States highlighting the need for better and more flexible deployment of existing instruments.<sup>56</sup> This push for flexibility has been particularly strong amongst several Mediterranean Member States, particularly Italy and Spain, who have pushed back against uncoordinated Member State-led national initiatives.<sup>57</sup>

The emphasis on the need for flexibility in the deployment of EU funding instruments within the conclusions of the March 2023 European Council could allow Ireland to make investments in key infrastructure and sectors that are necessary for the continued competitiveness and growth of Irish industry.<sup>58</sup> Evidence-based, strategic, and targeted deployment of available European and national public funding may prove to be more effective for long-term competitiveness than the short-term support of “national champions” that other states have pursued in the past.

To specifically target the goals of the wider Green Deal Industrial Plan for the Net-Zero Age, Commission President von der Leyen has signalled her intention to create a new funding instrument, the European Sovereignty Fund, before summer 2023. Divergent national opinions persist on this, with France and Italy showing strong support while Czechia and Germany questioning its very necessity.<sup>59</sup> In addition

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53. Ibid.

54. Ibid.

55. These include, but are not limited to: the Cohesion Fund, the European Social Fund+, the Innovation Fund, the InvestEU Programme, the Just Transition Fund, the NextGenerationEU Fund (NGEU), the REPowerEU Plan, and the Support to mitigate Unemployment Risks in an Emergency (SURE).

56. EUCO 4/23, p 6.

57. Von Der Burchard, H. (2023.) Germany's Scholz seeks to placate Italian concerns over EU state aid changes. [online] POLITICO Europe. Available at: <https://www.politico.eu/article/germany-olaf-scholz-placate-italy-giorgia-meloni-concerns-eu-state-aid-subsidies/> [Accessed 16 Mar. 2023]; Allenbach-Amman, J. (2023). March showdown: When EU fiscal rules meet industrial policy. [online] EURACTIV. Available at: <https://www.euractiv.com/section/economy-jobs/news/march-showdown-when-eu-fiscal-rules-meet-industrial-policy/> [Accessed 16 Mar. 2023].

58. EUCO 4/23, p 6.

59. Leali, G. (2023) France and Italy form new front on industrial policy. [online] POLITICO Europe. Available at: <https://www.politico.eu/article/france-and-italy-form-new-front-on-industrial-policy/> [Accessed 16 Mar. 2023]; Zachová, A. and Plevák, O. (2023) Czechia opposes European Sovereignty Fund. [online] EURACTIV. Available at: <https://www.euractiv.com/section/politics/news/czechia-opposes-european-sovereignty-fund/> [Accessed 16 Mar. 2023]; Siebold, S. (2022). Scholz on Sovereignty Fund: Use money from existing packages first. [online] Reuters. Available at: <https://www.reuters.com/world/europe/scholz-sovereignty-fund-use-money-existing-packages-first-2022-12-14/> [Accessed 16 Mar. 2023].

to these EU funds and instruments, the European Investment Bank Group (EIB Group) and private finance will play a key role in the success of the industrial plan. The completion of the Capital Markets Union (CMU), by the end of the current legislative term in 2024, is also deemed to be essential for effectively harnessing and allocating private resources across the Single Market.

## The External Dimension – Why Trade Matters

Developing new external trade relations, both bilateral and multilateral, will be important for maintaining Ireland's competitiveness in the future. The importance of ensuring that the EU further develops and deepens its network of free trade agreements with key partners, balancing enlightened self-interest and realpolitik considerations, has been recognised by an increasing number of Member States. With this in mind, and to mitigate against fears of protectionism contained within its new industrial policies, the Commission has highlighted several priorities in its international trade policy including:<sup>60</sup>

- relaunching negotiations for a free trade agreement with Thailand, the second-largest economy in the ASEAN region, to diversify EU trade ties with the Indo-Pacific;
- progressing negotiations for free trade agreements with India and Indonesia;
- concluding a free trade agreement with Australia before summer 2023;
- finalising the Economic Partnership Agreement with Kenya; and
- ratifying agreements concluded with Chile, Mexico, and New Zealand as well as developing a sustainability mechanism to complement the Mercosur agreement.

Of particular importance are those free trade agreements with states (e.g., Australia and Chile) which have copious reserves of important strategic resources such as lithium, silicon, rare earth metals, and platinum. These are key components of low-emissions technologies such as solar panels, electric vehicles, and batteries.<sup>61</sup> Reliable and secure access to these resources will be essential for the success of the Net-Zero Industry Act and the EU's Strategic Plan on Batteries.<sup>62</sup> In turn, the upcoming Spanish Presidency of the Council of the EU has signalled its particular eagerness to enhance economic and trade relations with Latin American states. While the institutions have not highlighted it, enhancing trade relations with resource-rich African states, such as the Democratic Republic of the Congo, could also be crucial. Furthermore, guaranteeing dependable and diverse supply chains and developing new trade partners will be essential to achieving the Union's goal of open strategic autonomy.

In addition to the trade negotiations, in the Green Industrial Plan for the Net-Zero Age, the Commission highlighted the need for focused action in its immediate neighbourhood. Specifically, it emphasised pursuing sustainable investments in digital, energy and transport infrastructure throughout the

60. COM(2023) 62 final, p 18.

61. Beattie, A. (2023). EU seeks to tone down the imperial style in search for critical minerals. [online] Financial Times. Available at: <https://www.ft.com/content/fe8d650d-19b9-482d-ab96-be692620e407?accessToken=zWAAAYck-F7V9kdP-jWUNGBllLdOrlr5pJiDkBw.MEUCIQDagNGyZp4J0u3VO1GMP5yoihPL1YYHmlcDtFxYtD8GsAlgSYV9PyVILIQXINX-OnaZuAnnmaYNDhvkuv8LXieueZf0&sharetype=gift&token=93cc8e5e-ad1f-4e14-9ba5-4465253ed796> [Accessed 26 Mar. 2023].

62. COM(2019) 176 final.

Western Balkans, Eastern Partnership states, and Southern Partnership states.<sup>63</sup> This is likely to feature strongly in the agenda of Spain's Presidency of the Council of the EU, particularly in the Southern Partnership.

The EU has already engaged in other forms of bilateral trade cooperation with third States such as the Trade and Technology Council with the USA which was established in June 2021. A second of these councils is almost operational with India.<sup>64</sup> These bodies provide a forum for the Union and its partner to coordinate transatlantic responses to changing economic and geopolitical realities, to enhance economic and trade cooperation, and to share best practices.<sup>65</sup> In addition to these bilateral relations, the Green Industrial Plan for the Net-Zero Age has made several proposals for multilateral cooperation, including the establishment of a critical raw materials club and clean tech partnerships.<sup>66</sup>

Some Member States have taken initiative at national levels to develop mutually beneficial bilateral agreements with trusted partners. For example, Germany and Japan reached an agreement to enhance their bilateral relations in order to reduce their dependencies on Chinese raw materials and bolster their supply chains.<sup>67</sup>

## Conclusion

Commission President, Ursula von der Leyen, summed up the impetus of the Green Deal Industrial Plan for the Net-Zero Age: "The race on who is going to be dominant in this market in the future. We must get our act together if we want to stay front-runners."<sup>68</sup> The Commission's actions target Europe's long-term economic competitiveness and the green industrial transition by securing essential economic inputs and outputs that are required to ensure the EU stays at the cutting edge of modern technological developments. While the proposed legislative instruments have a horizon of 2030, they are essential components of the Union's wider 2050 climate goals and set the scene for long-term policy approaches, policy debates, and policy shifts. It should be noted however that these legislative initiatives currently remain as proposals, providing an opportunity for Member States to reflect further before the next European Council summit which will discuss competitiveness in June 2023.

Over the past 30 years, there has always been a delicate balance between the integrity of the Single Market and the protection of national economic and industrial interests. The Green Deal Industrial

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63. COM(2023) 62 final, p 18.

64. Ibid, p 18.

65. EU-US Trade and Technology Council. [online] European Commission. Available at: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/stronger-europe-world/eu-us-trade-and-technology-council\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/stronger-europe-world/eu-us-trade-and-technology-council_en) [Accessed 22 Mar. 2023].

66. COM(2023) 62 final, p 19.

67. Murakami, S. and Rinke, A. (2023). Germany, Japan seek cooperation on economic security amid supply chain strains. [online] Reuters. Available at: [https://www.reuters.com/world/germany-seek-closer-economic-ties-with-japan-amid-supply-chain-tension-2023-03-17/#:~:text=TOKYO%2C%20March%2018%20\(Reuters\),by%20the%20war%20in%20Ukraine.%20](https://www.reuters.com/world/germany-seek-closer-economic-ties-with-japan-amid-supply-chain-tension-2023-03-17/#:~:text=TOKYO%2C%20March%2018%20(Reuters),by%20the%20war%20in%20Ukraine.%20) [Accessed 30 Mar. 2023].

68. Speech by President von der Leyen at the European Parliament Plenary on the preparation of the European Council meeting of 23-24 March 2023. [online] European Commission. Available at: [https://ec.europa.eu/commission/press-corner/detail/en/speech\\_23\\_1672](https://ec.europa.eu/commission/press-corner/detail/en/speech_23_1672) [Accessed 20 Mar. 2023].

Plan for the Net-Zero Age, together with the revision of the state aid instruments, arguably have the potential to offset this delicate equilibrium and up-end the last 30 years of Single Market policy. While the Commission has been careful to frame these new legislative proposals with discourse that upholds the Single Market, the scale of industrial policy and state intervention in the economy does seem to mark somewhat of a shift in Brussels' long-held orthodoxy of negative integration – that is, the removal of national barriers to integration.

While the rational approach would be to strike a fine balance between openness and protectionism, current shifts in the international order suggest that another approach may be required. To paraphrase Prince Tancredi Falconeri in Giuseppe Tomasi di Lampedusa's novel, *The Leopard*: “if we want everything to stay as it is [that is; that Europe remains a leading, competitive, and prosperous economy] everything has to change.”

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