

SEI response: Net-Zero Industry Act

With reference to the European Commission's proposal and the request for input from the Swedish Ministry of Climate and Enterprise under Remiss ärende: KN2023/02708.

Prepared by Timothy Suljada, Eileen Torres Morales, Rasmus Kløcker Larsen, Javad Keypour, Tayyab Ehsan Butt, on behalf of the Stockholm Environment Institute, 5 May 2023

Background to this response:

The Stockholm Environment Institute (SEI) is an international non-profit research and policy organization that tackles environment and development challenges. Headquartered in Sweden, the institute has centres in Estonia, Thailand, Kenya, UK, US, and Colombia. We connect science and decision-making to develop solutions for a sustainable future for all. Stakeholder involvement is at the heart of our efforts to build capacity, strengthen institutions and equip partners for long-term change. Our knowledge and findings are accessible: as our own open access material, in leading academic journals, and repackaged for effective decision support.

A background to the contributors to this response, and a disclosure of their interests can be found in Annex A.

Key points:

1. Most technologies are captured, but some definitional issues may arise
2. Fast-tracked approvals must address underlying issues and balance safeguards with targets
3. Green public procurement has great potential, but there is little new in the proposed Act

Response:

The measures proposed to become law under this Act demonstrate an important commitment to green industrial transition at the European level. Regardless of whether the “made in Europe” objectives of the act and its targets are achieved and whether or not these are commensurate with other initiatives in the US or China, they provide a welcome push to incentivise industry transition towards meeting climate change mitigation targets in 2030 and climate neutrality by 2050.

Most technologies are captured, but some definitional issues may arise. Strategic net-zero technologies defined under Article 3 of the proposed Act rightly capture final as well as components in a broad range of sectors. However, the definition of renewable energies, which refers to the definition under the 2018/2001 Regulation, does not include definitions for niche and potentially transformative technology methods such as Ocean Thermal Energy Conversion (OTEC) or Waste-to-Energy.

The inclusion of technologies connected to "nuclear processes with minimal waste" is not defined precisely in the proposed Act, nor to our knowledge has it been referred to or previously defined in specific EU regulation or directives. This may lead to ambiguity and risks interpretation that goes beyond the intention of the Act.

Fast-tracked approvals must address underlying issues and balance safeguards with targets. The proposed regulation aims to streamline investment and permit approvals, but it is not clear that the regulation deals with the underlying reasons for long permitting processes in member states. The establishment of a "one-stop shop" for permitting approvals under Article 4 and input to environmental assessments under Article 7 so long as these are well-resourced and have genuine power to convene national authorities. For example, it could help address issues of fragmentation in licensing in some member states such as in Sweden where the assessment of some permits have been split in two separate stages, undermining a holistic understanding of all project impacts.

However, its effectiveness may be hindered by the implementation of a complex and bureaucratic monitoring system for continuous oversight of the approval process. While the intention is to expedite the process, the heavy reporting and monitoring procedures could potentially impede progress. Ultimately, finding the right balance between expediting approvals and maintaining proper oversight will be crucial in achieving the desired outcome. From a human rights and environment perspective, the fast-tracking of licensing could be problematic. The provisions in Article 6 impose fixed time limits on decisions that for important reasons take much longer in current processes. The proposed Act provides few mechanisms to address underlying issues that explain why licensing today can take in some cases up to 5-10 years. Research in Sweden has shown how these delays often have to do with insufficient consideration of impacts on environment, local communities, and Indigenous Sámi communities and a lack of mechanisms for affected groups to participate in decision-making – in accordance with EU and international law (Raitio, Allard, and Lawrence 2020; Kløcker Larsen et al. 2022).

Imposing strict time limits without tackling the root causes of the land use conflicts may hence do more harm than good since affected groups will likely, as we already see today, still appeal (potentially more rapidly made) government decisions through (still long-drawn out) court proceedings, including using EU and UN complaints mechanisms. Rather than time limits, a more effective approach for the proposed Act would have been to target the root causes of the land use conflicts, prompting member states to more seriously attend to diverging societal views and hence how to ensure a broad sense of legitimacy for the green industrial transition

Green public procurement has great potential, but there is little new in the proposed Act. The procurement provisions under Article 19 of the proposed Act refer to the most economically advantageous tender, defined as the tender that offers the best price-quality ratio. Sustainability

and resilience criteria are mentioned to make part of this ratio, referring only to existing EU Directives. It is unclear whether additional criteria are expected to be taken into account, which might lead to divergent interpretations when selecting a winning net-zero technology bid. To harmonize how environmental criteria are considered in net-zero technology public procurements there should be a concrete delineation of the sustainability and resilience criteria the bids should include.

A greater impact may be achieved by strengthening requirements under a stricter definition of green procurement criteria in the proposed Act. For example, a plan and targets of minimum green criteria requirements could set boundaries for all tenders. The standardized use of green public procurement (GPP) criteria could include the use of materials and products with a low carbon footprint and a low environmental footprint.

In the EU, public purchasing represents 15% of its GDP, acting as a major influencer on the market through the products and services acquired by governments from the local to national levels (Lewis et al. 2023). The EU can play a role in supporting the implementation of impactful GPP practices through standardized reporting methods, tools and sectoral mandatory requirements. Most of the products covered by the proposed Act make use of steel and cement, which have high carbon emissions intensity. Requiring the use of green procurement criteria for the tender process of these products has the potential not only increase the market for low carbon materials but also to harmonize definitions and metrics for evaluating environmental performance of tenders and implementation progress reporting (Hasanbeigi et al. 2021).

Procurements that require specific GPP criteria can support achieving national and EU-wide decarbonization targets. Including environmental considerations in public procurement can result in a reduced environmental footprint of the public sector and ultimately support the decarbonization of key industries.

Complementary use of tools made to evaluate environmental criteria can reduce the burden that procurers might experience while trying to evaluate tenders by their economic and environmental criteria. One example is the CO2 performance ladder (Bechauf, Turley, and Casier 2023).

References

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Annex A. Background and disclosure of interests

This response includes contributions from the following employees of the Stockholm Environment Institute (SEI):

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As part of our work, over the past several years, SEI has actively engaged with European-based organizations and activities seeking to promote a green industrial transition. This includes SEI's role as:

- Secretariat of the [Leadership Group for Industry Transition \(LeadIT\)](#)
- Member of the [Think Sustainable Europe](#), a pan-European network of sustainability think tanks
- Co-host and organiser of the [Think2030 Dialogue Sweden](#) in association with the Swedish Presidency of the Council of the European Union