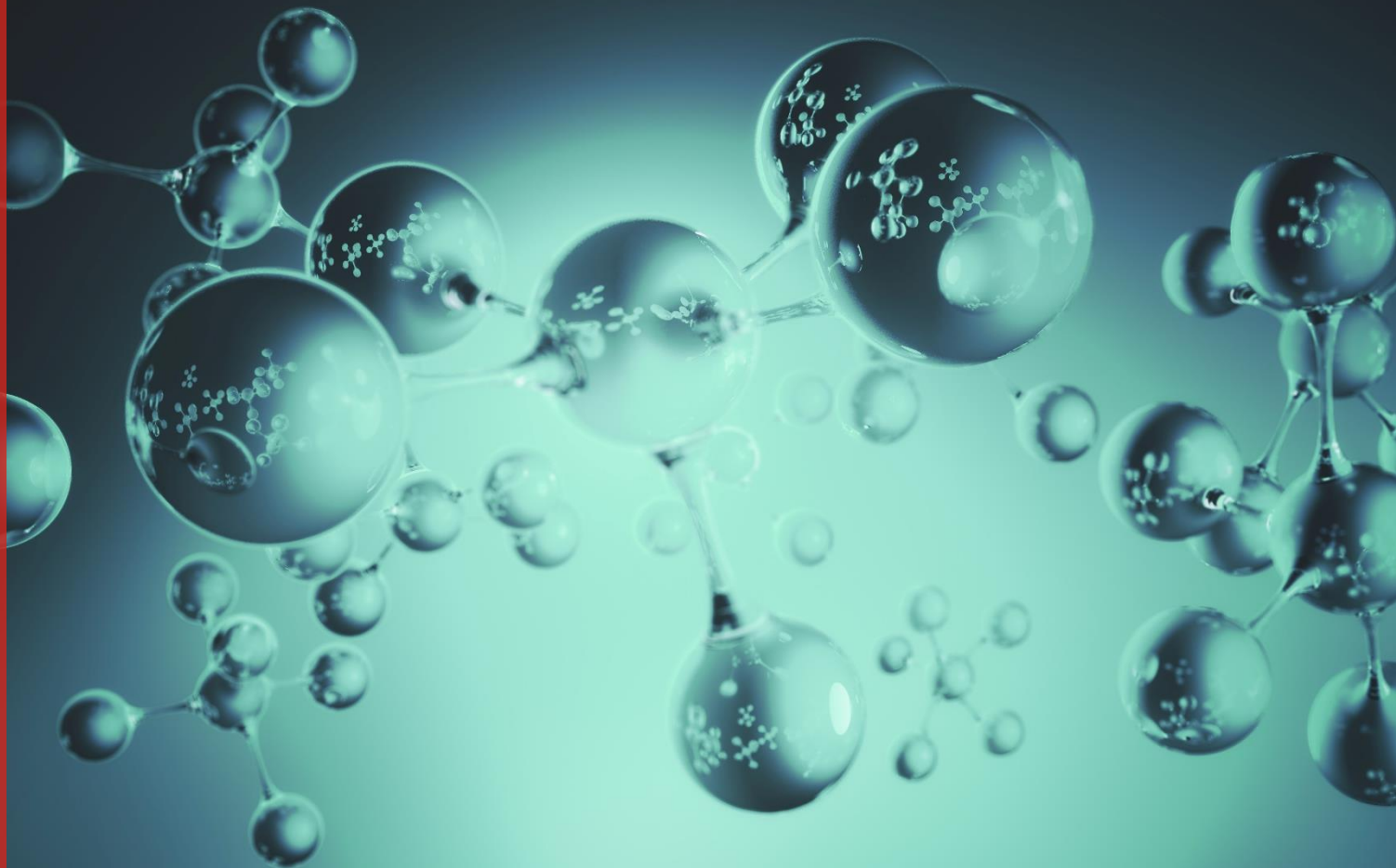


# Client alert

The details of the renewable and low-carbon hydrogen production financial support schemes are becoming clearer

Norton Rose Fulbright LLP - September 20, 2023



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In 2023, there are several major developments and breakthroughs in the hydrogen sector at both national and European level.

The announcement by the French government of a €4 billion financial package to support the production of renewable and low-carbon hydrogen, the adoption of the decree on the organization of the calls for projects, and the publication by the European Commission of the first bases for its pilot auction dedicated to the production of renewable hydrogen are essential steps towards increasing the quantities of carbon-free hydrogen produced in the European Union and the move to scale that the industry is calling for.

## Publication and entry into force of the decree specifying the call-for-projects and selection procedure of projects eligible to benefit from the production of renewable and low carbon hydrogen support scheme

Following the announcement on 28 August 2023 by the Minister for Energy Transition, Agnès Pannier-Runacher, of a €4 billion budget to support the production of renewable and low-carbon hydrogen, the implementing decree for this support scheme was finally published on 3 September.

As a reminder, Articles L. 812-1 et seq. of the Energy Code, resulting from Order no. 2021-167 of 17 February 2021<sup>1</sup>, provide for the introduction of a public support scheme for the production of renewable or low-carbon hydrogen through water electrolysis.

The support scheme will take the form of either operating aid (OPEX) or a combination of financial aid for investment (CAPEX) and operating aid<sup>2</sup>.

Article L. 812-3 of the French Energy Code referred to the adoption of a decree by the Conseil d'Etat to specify the conditions for organizing the competitive tendering procedure and selecting the projects eligible for such support.

This was achieved with the publication of the implementing decree<sup>3</sup> (eagerly awaited by industry players) in the Official Journal of the French Republic (*JORF*) on 3 September 2023, which came into force the following day.

The competitive tendering procedure as defined by the decree, which must be conducted in accordance with the principles of transparency and equal treatment, is divided into three distinct phases:

- a selection phase for eligible candidates<sup>4</sup>,

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<sup>1</sup> Ordinance no. 2021-167 of 17 February 2021 on hydrogen.

<sup>2</sup> Article L. 812-2 paragraph 3 of the French Energy Code.

<sup>3</sup> Decree no. 2023-854 of 1 September 2023 on the support scheme for the production of certain categories of hydrogen.

<sup>4</sup> New article R. 812-1 of the French Energy Code.

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- where appropriate, a competitive dialogue phase between the Minister responsible for energy and the candidates admitted at the end of the first phase, following which they will be invited to submit a bid<sup>5</sup>,
- and a designation phase to appoint candidates eligible to benefit of the financial support<sup>6</sup>.

The Minister responsible for energy must draw up two separate documents:

- **consultation rules** (*règlement de consultation in French*) to govern the selection phase for eligible candidates, setting out the requirements concerning the technical and financial capabilities of candidates or groups of candidates and the supporting documents expected during the application selection phase; the procedures for assessing the technical and financial capabilities of candidates; the criteria for selecting tenders at the end of the procedure.
- **specifications** for the appointment of candidates selected for support, including an exhaustive list of the criteria for scoring bids and their weighting or ranking, with quantitative criteria accounting for at least 70% of the total weighting.

ADEME (the French Environment and Energy Management Agency) must roll an online application site out, so that applicants can download the consultation documents and submit their applications.

Candidates selected at the end of this selection procedure will be eligible for a contract of up to 20 years, to be signed within 6 months of the project being selected as an awardee. In practical terms, they will receive support to offset hydrogen production costs, to smooth out the gap between the production costs of renewable, low-carbon hydrogen and those of carbon-based hydrogen, as well as bonuses where applicable.

The Minister for Energy Transition has recently reaffirmed<sup>7</sup> the Government's objective of speeding up the implementation of the roadmap to support the development of hydrogen electrolysis production capacity in France.

The draft of specifications had been pre-notified to the European Commission in February 2022, and that there had been numerous exchanges with the Commission<sup>8</sup>. The draft specifications are currently subject to a public consultation phase, which will end on October 20, 2023.

In this context, the French government specifies that for the first period of the call for tenders, a competitive dialogue phase<sup>9</sup> will be used, and wishes to start this dialogue phase at the beginning of 2024. As explained above, this will be preceded by the publication of a public call for tenders in the Official Journal of the European Union, in order to initiate the selection phase of candidates eligible for support.

The French government has announced that calls for projects will be launched in 2024, 2025 and 2026 in the form of power tranches<sup>10</sup>, with a total target of 1,000 MW, and this is confirmed in the draft specifications submitted for public consultation.

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<sup>5</sup> New article R. 812-10 of the French Energy Code.

<sup>6</sup> New article R. 812-14 of the French Energy Code.

<sup>7</sup> <https://www.lefigaro.fr/societes/le-gouvernement-alloue-4-milliards-d-euros-a-la-production-d-hydrogene-bas-carbone-20230828>

<sup>8</sup> <https://www.consultations-publiques.developpement-durable.gouv.fr/projet-de-decret-en-conseil-d-etat-relatif-a-la-a2858.html>

<sup>9</sup> New article R. 812-12 and R. 812-13 of the French Energy Code.

<sup>10</sup> The French government has announced tranches of 150, 250 and then 600 MW.

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The procedure defined by these new regulatory provisions is reminiscent of the competitive dialogue procedure organized for the selection of developers of offshore wind farm projects.

Although ADEME will be in the front line for the selection of the hydrogen production projects, rather than the Energy Regulation Commission (CRE) - unlike the procedures used for other renewable energy sources - the Commission has not been totally excluded from the procedure. In particular, the decree stipulates that the Minister responsible for energy will send it the specifications for the procedure for its opinion, and that he may also involve it in the competitive dialogue phase.

It is to be hoped that this support from the CRE will enable ADEME to benefit from its feedback and avoid certain difficulties that may have arisen in various past competitive tendering procedures, which have had the effect of slowing down the allocation of support or even leading to a loss of attractiveness of certain support mechanisms.

However, implementing the support mechanism for the production of renewable and low-carbon hydrogen is complex, given the large number of specific parameters to be taken into account, such as energy costs, the carbon footprint of the installation, effectiveness in terms of reducing CO<sub>2</sub> emissions, and the European legal framework, which is still under construction<sup>11</sup>.

A review of the national strategy for the development of low-carbon hydrogen (*Stratégie nationale pour le développement de l'hydrogène décarboné*) in France, drawn up in 2020, has also been announced and should be presented in the coming weeks.

For more information: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000048039013> and <https://www.ecologie.gouv.fr/consultation-sur-mecanisme-soutien-production-dhydrogene-decarbhone>

## **Publication on 30 August of the Terms and Conditions (T&C) for the first renewable hydrogen auction under the Hydrogen Bank**

The Innovation Fund<sup>12</sup>, key tool of the European Green Deal<sup>13</sup>, is a major funding program implemented by the European Commission with the support of the European Executive Agency for Climate, Infrastructure and the Environment. It provides grants to encourage investment in large-scale innovative low-carbon projects, industrial solutions and technologies that can decarbonize European industry and support Europe's transition to climate neutrality.

In March 2023, the European Commission presented a new plan under the *Net Zero Industry Act*<sup>14</sup> to stimulate and support investment in renewable hydrogen production through the European Hydrogen Bank<sup>15</sup> (EHB), to allow the European Union to achieve its objectives set out in the REPowerEU plan and reduce its dependence on Russian fossil fuels.

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<sup>11</sup> <https://www.consultations-publiques.developpement-durable.gouv.fr/projet-de-decret-en-conseil-d-etat-relatif-a-la-a2858.html>

<sup>12</sup> The Innovation Fund was created by article 10 a (8) of Directive 2003/87/EC.

<sup>13</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, COM(2019) 640 final.

<sup>14</sup> Regulation of the European Parliament and of the Council on the establishment of a framework of measures to strengthen the European manufacturing ecosystem for net-zero technology products COM (2023) 161 final, 2023/0081 (COD).

<sup>15</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Hydrogen Bank (COM (2023) 156 final, 16 March 2023).

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As part of this Plan, the European Commission recognized that integrating renewable hydrogen into industrial processes was one of the essential levers for reducing the consumption of fossil fuels in industry.

In this respect, auctions financed by the Innovation Fund and organized under the aegis of the European Hydrogen Bank will target renewable hydrogen.

On 30 August, the European Commission announced that the first auction procedure would be launched on 23 November 2023<sup>16</sup>.

The T&C, as published by the European Commission, provide future bidders with prior information on the economic structure of this procedure and the conditions under which projects will be eligible for a grant.

Several points should be borne in mind when reading these T&Cs:

- The financial aid will be paid in the form of a premium: the aid will take the form of a fixed premium in euros per kilogram of renewable hydrogen produced, paid over a period of 10 years. The purpose of this premium will be to bridge the gap between production costs and the price likely to be paid by hydrogen consumers, while ensuring that decarbonized hydrogen is competitive with carbon-based hydrogen.
- Introduction of a cap per kilogram of hydrogen produced: the European Commission has set a cap of €4.50 per kilogram of hydrogen produced, which corresponds to the maximum amount of the renewable hydrogen production premium that can be paid.
- Project eligibility criteria: to be eligible for the production premium, projects must meet the following eligibility criteria:
  - Projects must be located within the European Economic Area (EEA).
  - The projects must produce hydrogen that meets the qualification criteria for renewable liquid and gaseous fuels for the transport sector, of non-biological origin (RFNBO) within the meaning of European law. As such, the hydrogen must comply with the requirements of the Renewable Energy Directive<sup>17</sup> (RED II) and its delegated acts<sup>18</sup>.
  - The projects must represent new production capacity, i.e., capacity for which, at the time of the grant application, work has not yet begun.
  - Projects must have a newly installed electrolysis capacity of at least 5 megawatts of electricity (MWe).

For more information: [https://climate.ec.europa.eu/system/files/2023-08/innovationfund\\_pilotauction\\_termsandconditions\\_en.pdf](https://climate.ec.europa.eu/system/files/2023-08/innovationfund_pilotauction_termsandconditions_en.pdf)

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<sup>16</sup> [https://climate.ec.europa.eu/news-your-voice/news/upcoming-eu-hydrogen-bank-pilot-auction-european-commission-publishes-terms-conditions-2023-08-30\\_en](https://climate.ec.europa.eu/news-your-voice/news/upcoming-eu-hydrogen-bank-pilot-auction-european-commission-publishes-terms-conditions-2023-08-30_en)

<sup>17</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.

<sup>18</sup> Delegated Regulation (EU) 2023/1185 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a minimum greenhouse gas emission reduction threshold for recycled carbon fuels and specifying the methodology for assessing greenhouse gas emission reductions from renewable liquid and gaseous transport fuels, and Delegated Regulation (EU) 2023/1184 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin.



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