

# Client Alert

The European Commission has released its Wind Power Action Plan

Norton Rose Fulbright LLP - October 27, 2023



## Client Alert

The European Commission has released its Wind Power Action Plan

# The European Commission has released its Wind Power Action Plan

The European Commission (EC) has just published a European Wind Power package including a Wind Power Action Plan, which aims at helping the European wind industry navigate the current challenging context (i.a. covid recovery, Russia's invasion of Ukraine, problems of access to raw materials).

The Action Plan lists the key issues identified by the EC (e.g. rising inflation, unpredictable demand, lengthy and difficult permitting process, unfair competition from foreign operators) and proposes measures, organised around six main areas, like access to finance and fairer competition, to deal with these issues. The EC notably points to its band new powers to review Foreign Subsidies that may distort competition within the European market and calls for proactive engagement of European operators in this regard.

Although this Action Plan should be welcomed as it aims to protect Europe's green industry and strengthens the initial measures outlined in Fit for 55 package and the Renewable Energy Directive (RED III), from a French perspective, it questions the adequacy of the measures recently introduced by the legislator (as the recent Law of 10 March 2023 to encourage the acceleration of renewable energy projects) to sufficiently accelerate the development of renewable energy projects in general and wind power projects in particular, and our economic and energy sovereignty.

## Background

On 24 October 2023, the EC has published a European Wind Power Action Plan<sup>1</sup> with the intention of bolstering the wind industry which is confronting unique challenges.

The Action Plan is part of a wider European policy to enhance the competitiveness of Europe's net-zero industry and support the fast transition to climate neutrality<sup>2</sup>.

To achieve the EU's binding renewable energy target (requiring the installed capacity in EU to grow from 204 GW in 2022 to more than 500 GW in 2030)<sup>3</sup>, and put an end to the EU's dependence on Russian fossil fuels and fast forward the EU green transition, the wind power sector will be essential, as it provides clean, affordable and secure electricity to households, industry and increasingly our transport sector<sup>4</sup>.

Despite widespread acknowledgement of how crucial it is to the EU's decarbonisation objectives, the wind sector has been struggling with significant difficulties.

---

<sup>1</sup> Communication from the EC to the European Parliament, the Council, and the European economic and social committee and the Committee of the regions - E COM(2023) 669 final.

<sup>2</sup> The Green Deal Industrial Plan, and the proposals for a Net-Zero Industry Act (NZIA) and a Critical Raw Materials Act (CRMA).

<sup>3</sup> Recently increased at 42,5 % by 2030 by the revised Renewable Energy Directive 2018/2001/EU (RED Directive) as proposed by the EC in the REPowerEU plan.

<sup>4</sup> In 2022, it provided on average 16% of electricity consumed in the EU and often reaches more than 30% per day according to ENTSO-E data (and as mentioned in the European Wind Power Action Plan).

## Client Alert

The European Commission has released its Wind Power Action Plan

The post-covid recovery and Russia's invasion of Ukraine in 2022 have highlighted the fragility of the EU supply chains, including in the energy sector. A reindustrialisation effort is therefore imperative to protect the European Union's economic and energy sovereignty and restore our production capacity in strategic sectors as energy.

Those two crises have indeed exacerbated both the tensions in the markets for materials needed to build renewable energy projects<sup>5</sup> and the rise of interest rates, which limits the financing available.

The Wind Power sector suffers also important operating losses due to pressure from international competitors, particularly China<sup>6</sup>, which is not only a leading wind turbine generator producer (supplying nearly 60% of installed capacity worldwide in 2022) but also a leading supplier of raw materials and components starting to win orders in Europe.

## What is the Action Plan

The package recognizes the issues the sector is facing, such as rising inflation and commodity prices, insufficient and unpredictable demand, lengthy and difficult permitting processes, shortage of available qualified labour, and national tenders that focus on pricing criteria rather than environmental and social requirements that European products have.

The Commission has already taken some actions to deal with some of the key issues the EU wind manufacturing sector is facing, as the revised RED Directive, the emergency framework to accelerate the deployment of renewable energy, Electricity Market Design (EMD) reform, the Net-Zero Industry Act to accelerate permitting for net-zero technology manufacturing projects. Therefore, in view of the seriousness of the difficulties encountered by some of the major EU manufacturers in operating their business and the need to an immediate action to avoid losing the market, the EC considered that needed to be done to support the European wind sector.

In order to address these issues, the EC sets out an action plan with a wide variety of solutions and key pillars. These measures are organised around six main areas<sup>7</sup> and include in particular the following:

- The launch of the “Accele-RES” initiative to accelerate permitting of the wind power projects: In particular, this will involve digitalisation of the national permitting processes, the launch of a dedicated online tool to support the Members states in the processes, an update of two EU documents dedicated to the speeding of the procedures<sup>8</sup>.
- The increase in the visibility of the wind projects through wind pledge, publication of mid-term auction schedules, long-term plans for renewables deployment: this will involve an EU digital tool, the commitment of the Member States to commit to specific, concrete pledges on wind energy deployment volumes for at least the period 2024-

---

<sup>5</sup> According to the International Energy Agency, in the World Energy Investment 2023, the wind turbine CAPEX remain high in early 2023, at 35% above the low levels of early 2020.

<sup>6</sup> 2023 State of the Union Address by President von der Leyen.

<sup>7</sup> The areas are (i) accelerated deployment through increased predictability and expedited permitting, (ii) enhanced auction design rewarding higher-value contributed, (iii) access to finance to promote investment for wind energy manufacturing notably through EU green funds, (iv) a fair and competitive international environment to guarantee the level playing field in the wind sector (v) large-scale partnerships for the development of skills in renewable energy, (vi) increased collaboration with the industry and the Member States

<sup>8</sup> The Recommendation on speeding up permit-granting procedures for renewable energy projects (Commission Recommendation C/2022/3219 final) and the EC Staff Working Document Guidance to Member States on good practices to speed up permit granting procedures for renewable energy projects and on facilitating Power Purchase Agreements accompanying the document Commission Recommendation.

## Client Alert

The European Commission has released its Wind Power Action Plan

2026, the reinforcement of the cooperation between the EC and the Member States and the developers to identify concrete ready-to-go projects for wind and other renewables, including cross-border projects, and to support their rapid implementation.

- The publication of an Action Plan for grids in November 2023.
- The improvement and simplification of the design of the renewables energy auctions to bring quick and concrete improvements and harmonisation on the design of these auctions in every Member States, which are an important investment signals essential to ensure the profitability of the sector.
- Facilitate access to EU funding, in particular by expanding the possibility to support wind energy manufacturing under the Innovation Fund<sup>9</sup> by extending the scope of support to wind turbine and component manufacturing projects in the next call for proposals on 23 November 2023. The EC proposes also to increase the use of strategic procurement in the context of the Global Gateway<sup>10</sup>.
- Flexibility in the EU state aid rules: the Member States were urged to take full advantage of the flexibility in the state aid regulations provided by the Temporary Crisis and Transition Framework (TCTF). The possible prolongation of the crisis-related sections under TCTF, which can be useful for the wind sector, will also be evaluated by the EC in light of the level playing concerns.

The EC also discusses an important subject in the wind industry: the competitiveness of European manufacturers in the face of the growing power of Chinese players who place very low-priced bids in European auctions. European companies involved in the wind sector have expressed concerns in this respect, and they argue that their Chinese counterparts continually benefit from government backing, making it impossible for them to compete effectively on the market. The precedent in the solar photovoltaic sector, where European players suffered greatly from the Chinese competition, stresses the need for the EC to react quickly.

The EC describes this problem as a possible distortion of competition stemming from unfair trade practices that benefit foreign wind manufacturers -more specifically, a distortion arising from the potential subsidization of wind-related products entering the European market.

While the introduction of redesigned wind tenders will help European manufacturers, the EC is considering other means to address the possible unfair trade practices in the wind energy market. The EC notably refers to its recently adopted mechanism, the Foreign Subsidy Regulation (FSR), which primary objective is to safeguard the European market from the disruptive effects caused by subsidies provided by non-European Union governments.

The FSR has equipped the EC with a comprehensive set of trade defence instruments that may be utilized to address legitimate concerns about the level-playing field inside the internal market. Among these measures, a general tool for investigating all market situations can be very relevant in the present context, as the EC has the mandate to conduct ex officio investigations into any potentially distortive foreign subsidies. It permits the EC to investigate support granted by third country governments to companies up to 10 years prior to the opening of an investigation.

---

<sup>9</sup> The Innovation Fund, key tool of the European Green Deal, 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.

<sup>10</sup> Joint Communication to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank (Join (2021) 30 final).

## Client Alert

The European Commission has released its Wind Power Action Plan

In this context, the EC calls for active contributions by European companies which would like to signal possible unfair advantages that the foreign companies possess through different sets of government subsidization or file a formal complaint under the FSR rules.

The EC also makes clear that it will closely monitor any possible unfair trade practice and is betting on the effectiveness of certain trade agreements and the ongoing trade negotiations to strengthen the competitiveness of the EU Wind Power industry.

This strong and explicit commitment from the EC towards the EU Wind Power industry should certainly encourage any European player which faces any form of unfair competition from foreign companies to contact, even informally, the EC (in particular the DG Comp or the DG Trade) to find quick and constructive solutions to restore a playing field.

## The situation in France

This Action Plan should be welcomed as it aims to protect Europe's green industry.

Nevertheless, from a French perspective, there may be a correlation or a time lag.

Indeed, this Action Plan has been published by the EC at a time when France has, in recent months, adopted two major laws to promote its energy and economic sovereignty<sup>11</sup>.

We may well wonder if these texts have already become outdated (even before their implementing decrees and orders have been published), given that : (i) France, which is already behind schedule in achieving its own objectives, has only just adopted the legal framework that should enable her to catch up, and that (ii) the EC is already by the Action Plan asking the Member States to speed up even more.

For illustration purposes, the “Accele-RES” initiative comes at a time when France has just adopted the Renewable Energies Acceleration Law of 10 March 2023, which aims to speed up the authorisation procedures for renewable energy projects such as wind power projects, and many implementing texts are still missing. Prior to this legislation, it took almost 7 years for a wind farm to become a reality, and 10 years for an offshore wind farm. The aim of this law was therefore to reduce these timescales. In France, project authorisation procedures times are much longer than in other Member States (nowadays and certainly even after the law is implemented).

It was already possible to question the ability of the Law of 10 March 2023 to encourage the acceleration of renewable energy projects in France, and this question is even more relevant today.

---

<sup>11</sup> Law n° 2023-973 dated 23 October 2023 on green industry (“Loi relative à l’industrie verte”) and Law n° 2023-175 dated 10 March 2023 accelerating the production of renewable energies (“Loi relative à l’accélération de la production d’énergies renouvelables”).

## Client Alert

The European Commission has released its Wind Power Action Plan

# Authors



**Marta Giner Asins**

**Partner**

Paris

+33 1 56 59 52 72

marta.ginerasins@nortonrosefulbright.com



**Anne Lapiere**

**Partner**

Paris

+33 1 56 59 52 90

anne.lapiere@nortonrosefulbright.com



**Michel Pflieger**

**Senior Associate**

Paris

+33 1 56 59 52 74

michel.pflieger@nortonrosefulbright.com



**Sandra Hahn Duraffourg**

**Associate**

Paris

+33 1 56 59 54 28

sandra.hahnduraffourg@nortonrosefulbright.com



Norton Rose Fulbright provides a full scope of legal services to the world's preeminent corporations and financial institutions. The global law firm has more than 3,000 lawyers advising clients across more than 50 locations worldwide, including Houston, New York, London, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg, covering the United States, Europe, Canada, Latin America, Asia, Australia, Africa and the Middle East.

[nortonrosefulbright.com](http://nortonrosefulbright.com)

EU-#752872550v1