JONES DAY

The Climate Report

REGULATORY ISSUES & UPDATES

UK Introduces New Climate-Related Disclosure Regulations for UK Companies and LLPs

The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 ("the Regulations") came into force on April 6, 2022. The Regulations amend the Companies Act 2006 and largely implement the recommendations of the Task Force on Climate-related Financial Disclosures ("TCFD"). In doing so, the United Kingdom is the first G20 country to enshrine in law mandatory TCFD-aligned reporting requirements.

Many companies will already voluntarily report in line with the TCFD recommendations, but all in-scope companies will now need to familiarize themselves with the details of sections 414CA and 414CB of the Companies Act 2006 to consider their arrangements for reporting on climate-related risks and opportunities.

The Regulations apply to a UK-incorporated company which has more than 500 employees and is: (i) a traded company (one whose shares are traded on a UK-regulated market or on the Alternative Investment Market); (ii) a banking company; (iii) an authorized insurance company; or (iv) a company with a turnover of more than £500m.

The Department for Business, Energy & Industrial Strategy has published nonbinding guidance to accompany the Regulations, but in broad terms the following disclosures are required:

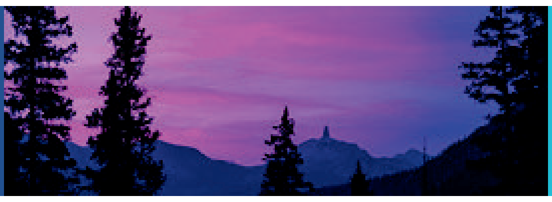
- A description of the company's governance and arrangements in relation to assessing and managing climate-related risks and opportunities;
- A description of how the company identifies, assesses, and manages climate-related risks and opportunities;
- A description of how processes for identifying, assessing, and managing climate-related risks are integrated into the company's overall risk management process;
- A description of: (i) the principal climate-related risks and opportunities arising in connection with the company's operations; and (ii) the time periods by reference to which those risks and opportunities are assessed;
- A description of the actual and potential impacts of the principal climate-related risks and opportunities on the company's business model and strategy;
- An analysis of the resilience of the company's business model and strategy, taking into consideration different climate-related scenarios;
- A description of the targets used by the company to manage climate-related risks and to realize climate-related opportunities and of the performance against those targets; and
- A description of the key performance indicators used to assess progress against targets used to manage climate-related risks and realize climate-related opportunities and of the calculations on which those key performance indicators are based.

In the event of noncompliance with the Regulations (and the other statutory requirements relating to strategic reports), the Conduct Committee of the Financial Reporting Council has the authority to go to court to compel a company to revise its strategic report. The court may order the company directors to personally pay for the costs associated with preparing a revised report.

The Regulations provide UK companies with a uniform way to assess the financial impacts of their exposure to climate-related risks and opportunities. The disclosures will reveal how companies are dealing with the challenges posed by a changing climate, and this in turn will help investors and stakeholders put climate change at the forefront of their decision-making.

Parallel changes have been made to the reporting requirements by certain limited liability partnerships with the introduction of The Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022.

— Will Land (+44.20.7039.5645, wland@jonesday.com)
— Christopher Papanicolaou (+44.20.7039.5321, cpapanicolaou@jonesday.com)



The Climate Report

REGULATORY ISSUES & UPDATES

France Regulates the Use of Carbon Neutrality Claims in Advertisements

As part of its legislative arsenal to combat climate change, France adopted the Climate and Resilience Law on August 22, 2021 ("Climate Law"), providing for a large number of binding measures against greenhouse gas ("GHG") emissions.

Some of these measures are specifically aimed at preventing greenwashing practices. To this end, article 12 of the Climate Law prohibits companies from claiming in an advertisement that their products or services are carbon neutral, or using any wording of equivalent meaning or scope (e.g., "zero carbon," "climate neutral," "fully offset") unless they can make available to the public the following information:

- A GHG emissions report integrating the direct and indirect emissions of their products or services;
- The process by which the GHG emissions of their products or services are: (i) avoided, (ii) reduced, or (iii) offset and the plan for GHG emissions reduction; and
- The methods for offsetting residual GHG emissions that comply with minimum standards.

In order to provide guidance for the implementation of article 12 of the Climate Law, the French government adopted a decree on April 13, 2022 (Decree n° 2022-539), which comes into force on January 1, 2023. According to this decree, companies will have to prepare a summary report containing:

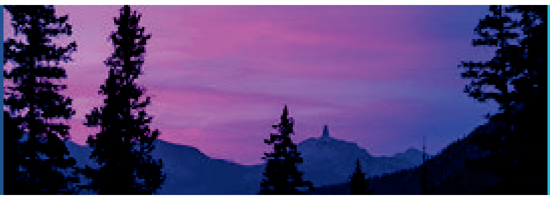
- The annual GHG emissions covering the entire life cycle of the advertised products or services, prepared in accordance with the requirements of standard NF EN ISO 14067 or any other equivalent standard;
- The reduction plan for GHG emissions associated with the advertised products or services, with annual progress targets over 10 years. An updated plan covering a further 10-year period is published every five years; and
- The details of the arrangements for offsetting residual GHG emissions, specifying, for example, the nature, the description, and the cost of the offsetting projects.

This summary report shall be updated annually in order to monitor the evolution of GHG emissions in comparison with the defined reduction plan. In the event that the emissions associated with the products or services before offsetting increase between two consecutive years, the company will have to withdraw the carbon neutrality claim from its advertisements.

In addition, a second decree (Decree n° 2022-538), also adopted on April 13, 2022, sets out the conditions under which the noncompliance with the above-mentioned requirements could be subject to administrative sanctions. According to this decree, the Ministry in charge of the environment must first send a letter to the noncompliant company, which will have one month to provide its response. Based on the response, the Ministry may then issue a formal notice requiring the company to comply with its obligations within a given period of time. If the company does not comply with the formal notice within the specified period, the Ministry shall then order the payment of an administrative fine of EUR 100,000, which may be increased to the full amount of the expenditure on the noncompliant advertisement.

At a time when companies' climate commitments are at the heart of civil society's expectations, this new regulation provides a framework for the growing number of climate claims made in advertisements, with strict criteria to ensure their legitimacy and limit the risks of greenwashing.

— Armelle Sandrin-Deforge (+33.1.56.59.39.47, asandrindeforge@jonesday.com)
— Karim Tarantino (+33.1.56.59.38.07, ktarantino@jonesday.com)



The Climate Report

REGULATORY ISSUES & UPDATES

EU Commission Proposes Two New Regulations to Tighten Control on Highly Potent Greenhouse Gases

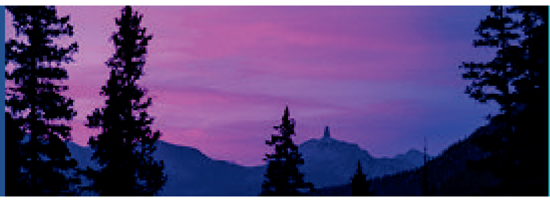
On April 5, 2022, the EU Commission proposed two new regulations to restrict the emission and use of highly potent greenhouse gases, which heavily contribute to global warming, in order to limit global temperature rise and the objectives of the Paris Agreement and the Montreal Protocol to the Vienna Convention for the protection of the ozone layer.

The first proposal would replace Regulation (EC) No 1005/2009 of September 16, 2009, on substances that deplete the ozone layer ("ODS Regulation") currently in force, which prohibits production, trade, and use of ozone depleting substances ("ODS"), except for a few exempted specific uses, and limits the trade and use of products and equipment with ODS. Nonetheless, considering that most ODS have been phased out, the EU Commission has proposed to end now-obsolete exemptions and to shift from the current quota and registration system to a more operational licensing system. The proposal also includes new recovery obligations to prevent emissions from old products and equipment that still contain ODS (e.g., insulating foams in buildings) and new monitoring, reporting, and enforcement measures to fight illegal activities.

The second proposal would replace Regulation (EU) No 517/2014 of April 16, 2014, on fluorinated greenhouse gases ("F-Gas Regulation") currently in force, which aims at controlling the placement of fluorinated greenhouse gases ("F-gases") on the EU market, mainly through the implementation of a quota system for hydrofluorocarbons ("HFCs") to ensure their progressive phasedown. Nonetheless, in order to ensure that the EU stays in line with its international commitments, in particular the Kigali Amendment to the Montreal Protocol regarding HFCs, the EU Commission has proposed to tighten the phasedown of HFCs by strengthening the quota system, including with stricter registration rules and a fixed quota price. It also proposes to restrict the use of F-gases to new equipment where suitable alternatives are not available, while abolishing some existing exemptions. In addition, the proposal extends monitoring and reporting obligations to new activities and reinforces enforcement measures to fight illegal trade.

The revision of these two regulations will likely be a lengthy process with expected back-and-forth between EU institutions, which may bring changes to the proposed provisions. In any case, if the current proposals tend toward a more stringent legal framework for highly potent greenhouse gases, this will represent significant opportunities for industries, as the proposed measures favor alternative substances replacing ODS and F-gases as well as the development of more climate-friendly equipment and technologies.

— Armelle Sandrin-Deforge (+33.1.56.59.39.47, asandrindeforge@jonesday.com)
— Nicolas Audifax (+33.1.56.59.39.86, naudifax@jonesday.com)



The Climate Report

REGULATORY ISSUES & UPDATES

Further Clarifications on Anti-Greenwashing Standards for Financial Products in the European Union

In its Sustainable Finance Roadmap 2022-2024, European Securities and Markets Authority ("ESMA") has recently underscored the importance of developing a cohesive supervisory approach in the area of sustainable finance across Europe. Conscious that growing investor demand for environmental, social, governance ("ESG") financial products and fragmentation in how ESG rules are being read creates room for greenwashing, ESMA emphasized its intention to work closely with the national EU regulators to address with coordinated action greenwashing practices over the next two years.

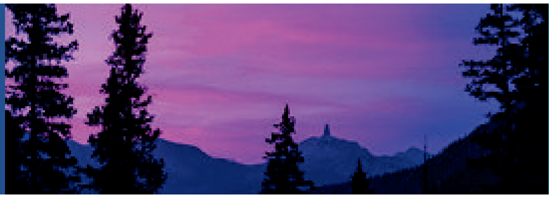
In the asset management field, greenwashing has been of concern for the EU regulators for the past few years, as some asset managers, in an effort to satisfy growing demands of investors, have been overstating the sustainability profile and characteristics of the funds they manage/market. The regulators have become particularly attentive to such practices and expect asset managers to substantiate ESG claims that they put forward.

Regulation 2019/2088 of November 27, 2019, on sustainability-related disclosures in the financial services sector (the "SFDR Regulation"), which came into effect on March 10, 2021, in all EU Member States, imposes significant additional disclosure obligations on its in-scope entities, such as investment managers and investment firms providing investment advice. The purpose of the SFDR Regulation is to avoid the greenwashing of financial products and financial advice in the EU by imposing on in-scope entities, including asset managers and investment advisors, an obligation to provide more substantiated, sustainability-related information to allow investors to make informed investment decisions in line with their sustainability objectives.

In this context, on April 6, 2022, the European Commission adopted regulatory technical standards ("RTS") to be used by financial market participants when disclosing sustainability-related information under the SFDR Regulation. The RTS aim at standardizing ESG investment disclosures to enhance the transparency and comparability of such disclosures. They include guidelines regarding the details of the content and presentation of the information in relation to the principle of "do no significant harm" (also used in the Taxonomy Regulation). This includes guidelines regarding the content, methodologies, and presentation of information in relation to sustainability indicators and adverse sustainability impacts, as well as the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in precontractual documents, on websites, and in periodic reports.

The standards include a "comply or explain" mechanism, which requires market participants to "comply" with the rules by providing specified qualitative and quantitative information describing efforts to reduce negative environmental and social impacts of investments, or "explain" why certain investments do not cause environment or social injustice. The standards also describe rules on website disclosures and product-level periodic disclosures on financial products. The technical standards will now be subject to review by the European Parliament and Council over the next three months, and in case of no objections, the RTS will then apply beginning January 1, 2023.

— Olga Goncharska (+33.1.56.59.46.14, ogoncharska@jonesday.com)

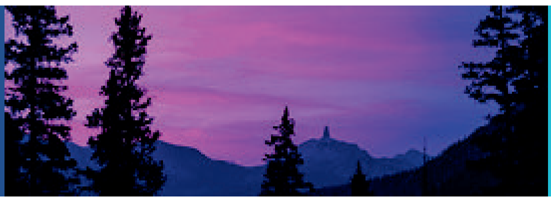


The Climate Report

REGULATORY ISSUES & UPDATES

U.S. Securities and Exchange Commission Releases Proposed Rule on Climate Risk Disclosure

As previously reported, on March 21, 2022, the U.S. Securities and Exchange Commission ("SEC") proposed amendments to Regulations S-K and S-X that would require registrants to provide certain climate-related information in their registration statements and periodic reports, including disclosures regarding direct (Scope 1), indirect (Scope 2), and for certain registrants, up-and-downstream (Scope 3) emissions. The SEC recently extended the public comment period on the proposed rulemaking until June 17, 2022.



The Climate Report

LITIGATION ISSUES & UPDATES

Fifth Circuit Stays Preliminary Injunction Enjoining Implementation of President Biden's Executive Order 13990 on the Social Cost of Greenhouse Gases

On March 16, 2022, the Fifth Circuit Court of Appeals, in *Louisiana v. Biden*, No. 22-30087, 2022 WL 866282, stayed a preliminary injunction that enjoins the federal government from using interim estimates published under Executive Order 13990, an order that directs federal agencies to consider as part of their cost-benefit analyses the social costs of greenhouse gases ("SC-GHG") when implementing regulations and other relevant agency actions. This is the first time a court of appeals has issued any substantive rulings in regard to EO 13990.

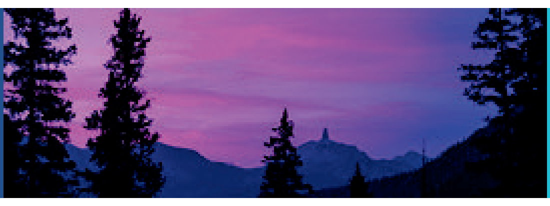
President Biden issued EO 13990 on his first day in office. Among other things, the action establishes and directs an Interagency Working Group on the Social Cost of Greenhouse Gases ("Working Group") to quantify the social costs of carbon, methane, and nitrous oxide emissions. President Obama convened a similar Working Group in 2009, which was dismantled by the Trump administration. Consistent with EO 13990, on February 26, 2021, the Working Group published Interim Estimates that are identical to those developed by the Working Group under President Obama in 2016, except the current values have been adjusted for inflation.

As previously reported, the State of Missouri and 12 other states challenged EO 13990, alleging violations of the U.S. Constitution and the Administrative Procedure Act ("APA"). The Eastern District of Missouri dismissed the case for lack of standing, and an appeal remains pending in the Eighth Circuit Court of Appeals.

The State of Louisiana and 10 other states filed a similar suit in the Western District of Louisiana, again challenging EO 13990 on grounds that it violates the APA. The district court held that the plaintiff states had standing and further granted a preliminary injunction after finding that the states were likely to succeed on the merits. The government then filed a motion to stay the preliminary injunction. The Fifth Circuit granted the motion to stay, finding that the federal government was likely to prevail on its standing challenge. The states' claims amounted to a "generalized grievance," and any injury stems from "forthcoming, speculative, and unknown regulation[s]." The Fifth Circuit explained that "no obstacle" prevents the states from challenging a specific agency action that uses the SC-GHG values. The states sought en banc review of the Fifth Circuit's three-judge panel decision, which has also been denied. The preliminary injunction remains stayed pending the underlying appeal before the Fifth Circuit.

Although the Working Group intended to issue final SC-GHG values by January 2022, it has not yet done so. On January 25, 2022, the U.S. Environmental Protection Agency ("EPA") published in the Federal Register requests for nominations of outside experts to review the final SC-GHG estimates. Details on the EPA's "peer review schedule" will be posted online once available. In addition to determining final values, the Working Group must also provide recommendations on a methodology for periodically reviewing and updating the SC-GHG estimates. These recommendations are due by June 1, 2022, but it is unclear whether the Working Group will meet this deadline.

— Jane Borthwick Story (+1.412.394.7294, jbstory@jonesday.com)
— Mark A. McCormick-Goodhart (+1.412.394.9509, mmccormick@jonesday.com)



The Climate Report

LITIGATION ISSUES & UPDATES

Energy Transition and Climate Change Treaties

As climate change and energy transition play an increasingly important role in the decision-making of private and government entities, one issue is bound to become the focus of attention: Is there a potential conflict between States' international environmental law obligations and investment treaty protections granted by the same States to foreign investors?

International Environmental Law Obligations. In recent years, countries have signed numerous international climate change treaties. Thus, in 1992, the United Nations Framework Convention on Climate Change ("UNFCCC") was adopted and has been ratified by nearly all countries worldwide. Pursuant thereto, signatory states agreed to aim to stabilize greenhouse gas emissions but set no obligations or specific targets to do so. In 2015, the Paris Agreement was adopted by roughly the same countries, representing more than 98% of the world's emissions. It was the first agreement to set a specific goal, limiting global warming to below 2 degrees Celsius compared to pre-industrial levels, and to require countries to implement measures to that effect. In 2021, the COP26 Glasgow Climate Pact was adopted and ratified by the same countries. The signatories committed to accelerate efforts toward the "phasedown" of unabated coal power and phaseout of inefficient fossil fuel subsidies and revisit emission reduction plans in 2022 to keep the Paris Agreement target achievable.

Investment Treaty Protections. In parallel, more than 3,000 investment treaties concluded by these same States provide foreign investors with investment protections under international law. These protections include fair and equitable treatment, full protection and security, and protection against direct and regulatory expropriation without payment of compensation. As such, in some situations there may be potential for conflict, at least on its face, between States' obligations under the Paris Agreement to reduce greenhouse gas emissions and their obligations under investment treaties to protect the legitimate expectations of investors, including fossil-fuel investors, and to provide compensation upon expropriation.

The Energy Charter Treaty. While certain recently adopted investment treaties have arguably preempted the issue by specifically addressing the regulation of the environment in the context of investment treaty protection (e.g., Chapter 14 of the United States–Mexico–Canada Agreement), other treaties do not specifically make such provision. For example, the Energy Charter Treaty ("ECT") was ratified by the signatories of the Paris Agreement and members of the UNFCCC. Its signatories are faced with potentially competing obligations. On the one hand, they are required, under the ECT, to protect "all" investments in the energy sector, including coal, oil, and natural gas investments. Whereas, on the other hand, they are obliged to implement measures under the Paris Agreement to cut emissions significantly by 2030 and achieve climate neutrality or "net zero" carbon emissions by 2050. Reaching these targets will require steep reductions in greenhouse gas emissions and an unprecedented overhaul of energy systems, including the phasing out of fossil-based energy sources.

No provision in the ECT, the Paris Agreement, or the UNFCCC sets out how these climate neutrality obligations need to be introduced. Further, none of the more than 60 available ECT awards has yet involved an investor claim challenging state action taken for purposes of climate action, decarbonization, or energy transition. However, the first such claims have now been filed under the ECT, against the Netherlands, by German utility companies RWE and Uniper. They are challenging a 2019 law which phases out all coal plants by 2030. This law was enacted to meet the Netherlands' commitments under the Paris Agreement after the government was found to be taking insufficient action by the courts. Both investors claim that this law does not include adequate compensation to phase out or transition their fossil fuel-reliant plants, which amounts, they say, to an expropriation of their investments. The Netherlands has raised defenses based on climate law, including the Paris Agreement.

A tribunal deciding a dispute under the ECT could take into consideration other international environmental law obligations. Article 26 of the ECT requires tribunals to decide investor-state disputes in accordance with the ECT and applicable rules and principles of international law. These rules and principles may include state obligations under international climate and environmental treaties and customary international law. Such interpretation is, however, limited by Article 16 of the ECT, which provides that, where there is a conflict between an ECT provision and a provision of another treaty, the treaty provision more favorable to the investor will prevail.

Numerous investment treaties, however, may not contain provisions similar to Article 16 of the ECT. As such, a real question is likely to arise as to whether national environmental measures implemented under, inter alia, the Paris Agreement can trump investment protections contained in other treaties.

***

Treaties will undoubtedly have an increasing impact on industries affected by climate change and energy transition (e.g., oil and gas, mining, etc.). Companies in those industries should seek specialist advice in relation to this fast-evolving and complex area of law.

— Sylvia Tonova (+44.20.7039.5218, stonova@jonesday.com)
— Michelle Bradfield (+44.20.7039.5126, michellebradfield@jonesday.com)
— Fahad A. Habib (+1.415.875.5761, fahabib@jonesday.com)
— Melissa S. Gorsline (+1.202.879.5421, msgorsline@jonesday.com)
— Caroline Edsall Littleton (+1.202.879.3733, celittleton@jonesday.com)
— Philip J. Devenish (+44.20.7039.5531, pdevenish@jonesday.com)
— James Egerton-Vernon (+1.202.879.3610, jegertonvernon@jonesday.com)

The Climate Report

TRANSACTIONAL ISSUES & UPDATES

U.S. and EU Create Joint Task Force to Increase Natural Gas Imports and Reduce Dependence on Russian Energy

On March 25, 2022, President Biden announced the creation of a joint task force with the European Union ("EU") to increase natural gas imports to reduce Europe's dependence on Russian energy. President Biden agreed that the United States will work with international partners to deliver at least 15 bcm of additional liquefied natural gas ("LNG") volumes to the EU market, with an expectation to increase the amount annually. Such natural gas supply commitments appear to pit the Biden administration's stated plans to cut fossil fuel use as part of its larger climate change strategy (as discussed in further detail in Jones Day's prior *Alert* here) against the strategic need to provide increased natural gas support to the EU. However, for reasons that will be explored here, the medium and long-term impact of these commitments on fossil fuel use remains uncertain.

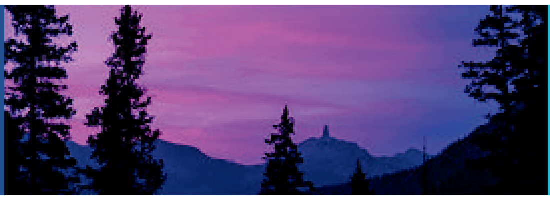
Notwithstanding the fact that President Biden scheduled the United States to increase the amount of LNG delivered annually, the United States has already maxed out its export capabilities and will not, in the near term, be able to significantly increase exports beyond those already planned. Prior to President Biden's announcement, United States LNG exporters had already begun diverting Asia-bound shipments to Europe. So far in 2022, the United States has exported almost 75% of its LNG to Europe, a 41% increase from all of 2021. In addition, all seven U.S.-based LNG export facilities are currently operating at capacity (liquefying about 12.7 bcfd of natural gas).

Additionally, the planned increase in LNG imports poses a problem for Europe—namely, insufficient import capacity. Running up to the Russia/Ukraine conflict, certain European countries may have been complacent in LNG import facility investment, in part due to the option to purchase cheaper gas from Russia via pipeline. Further, Europe's LNG terminals, specifically the terminals in the northwest, are already at full capacity, supporting Britain, France, and Germany. Ultimately, any short-term plans for natural gas supply to the EU will be capped by the existing capacity of its 26 import terminals and limited by the infrastructure to bring the natural gas to end users—the construction of LNG export/import facilities and associated infrastructure can take several years and billions of dollars.

Looking to the long-term, notwithstanding the reported rush to endorse new LNG import facility projects (e.g., Germany, which currently does not have any LNG import terminals, recently contracted with Shell to build two new facilities), there are various factors that may impede development. For instance, some believe that difficulty of securing financing for new LNG terminals may be an issue. Italy, Belgium, Poland, Germany, Cyprus, and Greece have import terminals in the planning stages or being built but cannot move forward until securing private investment. Investors may be hesitant to undertake this long and expensive investment given the uncertainty—for instance, the 2020 COVID-19-induced price crash in natural gas remains fresh, and future long-term climate policies could destroy natural gas demand and their return on investment.

Given the above, while the current situation in the Ukraine and the need to establish "Russia-free" energy security for Europe will require substantial support for Europe's demand for fossil fuels in the short term, the impact of this support on the administrations' hydrocarbon-related medium and long-term climate goals is uncertain. For additional information, visit: The White House, FACT SHEET: United States and European Commission Announce Task Force to Reduce Europe's Dependence on Russian Fossil Fuels.

— David S. Stringer (+1.832.239.3761, dstringer@jonesday.com)
— Hailey R. Hennessey (+1.832.239.3691, hhennessey@jonesday.com)



The Climate Report

TRANSACTIONAL ISSUES & UPDATES

European Commission Awards Grants to Seven Large-Scale Projects Under the Innovation Fund

On March 10, 2022, the European Commission ("the Commission") adopted a decision on the award of grants under the Innovation Fund ("the Fund"). A total of seven projects obtained a grant after a first call for large-scale projects.

The Innovation Fund is provided for by the Commission Delegated Regulation (EU) 2019/856, supplementing Directive 2003/87/EC, which established a scheme for greenhouse gas emission allowances and is financed by revenues from the auctioning of the allowances under the EU Emissions Trading System. The Fund aims at supporting projects involving highly innovative technologies, processes, or products that are sufficiently mature and offer significant potential to reduce greenhouse gas emissions.

The first call for projects above €7.5 million of capital expenditure, "large-scale projects," opened on July 3, 2020, with a budget of €1 billion for breakthrough technologies for renewable energy, energy-intensive industries, energy storage, and carbon capture, use, and storage. Assessment of the admissibility and eligibility conditions was undertaken based on five criteria established in Article 11 of Delegated Regulation (EU) 2019/856: Potential for greenhouse gas emission avoidance, degree of innovation, project maturity, scalability, and cost efficiency.

Seven projects have been awarded grants. These projects aim at reducing a total amount of more than 76 Mt of CO2eq during the first 10 years of operation.

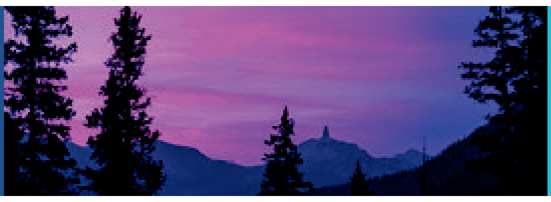
By way of illustration, one of the selected projects will reduce emissions at a refinery in Finland by transitioning from the production of grey (fossil fuel-based) hydrogen toward both green hydrogen production (through the introduction of electrolysis) and blue hydrogen production (by applying carbon capture technology). This grant award is in line with the adoption by the Commission in December 2021 of legislative proposals, a regulation and a directive, to facilitate the uptake of renewable and low-carbon gases, in particular hydrogen, by setting up common rules for the internal market in hydrogen. The directive proposal also defines how hydrogen production qualifies as renewable ("green") or low-carbon ("blue").

The other selected projects will include innovative low-carbon technologies at industrial scale, covering other key sectors such as steel, chemicals, cement, solar energy, biofuels, and carbon capture and storage.

On October 26, 2021, the Commission launched the second call for large-scale projects, with a budget of €1.5 billion, which is increased by 50% compared to the previous call. Grants will be awarded in the last quarter of 2022. Calls for projects under the Innovation Fund are planned until 2030.

— Armelle Sandrin-Deforge (+33.1.56.59.39.47, asandrindeforge@jonesday.com)

JONES DAY



The Climate Report

TRANSACTIONAL ISSUES & UPDATES

UK Government Publishes Its "British Energy Security Strategy"

The British Energy Security Strategy ("the Strategy"), published on April 7, 2022, aims to ensure that the United Kingdom has "a flow of energy that is affordable, clean and above all secure." Published against the background of events in Ukraine, it provides little comment on global politics or reliance on foreign sources of energy, but instead focuses on reducing the United Kingdom's reliance on fossil fuels and, in turn, exposure to the volatility of international energy prices.

The Strategy sets out long-term targets for offshore wind, solar, hydrogen, and nuclear energy, but fails to address concerns relating to rapidly rising energy costs, the net-zero transition, or short-term energy security. The Strategy makes only minor changes to the UK government's "Net Zero Strategy" published in October 2021. Some of the key points arising are as follows:

Offshore Wind. The UK government intends to "take advantage of Britain's inexhaustible resources of wind" with ambitions of producing up to 50GW of electricity from wind by 2030, including up to 5GW from floating wind farms. To achieve this, the government aims to halve the time for establishing wind farms by: (i) reducing the average consent time from four years to one year; (ii) reviewing environmental regulations and streamlining the habitat assessment process; and (iii) establishing a fast-track consent route for priority cases where quality standards are met.

Notably, the Strategy is devoid of any meaningful commitments relating to onshore wind. There are no proposals to overhaul planning rules which currently hinder development of onshore wind farms. The failure to promote onshore wind is widely considered a missed opportunity as it is one of the cheapest forms of renewable power.

Solar. The Strategy sets out further support for solar power which it dubs "a globally abundant resource." The government will consult on amending planning regulations to strengthen policy in favor of solar development on nonprotected land. Similarly, the government intends to radically simplify the planning process for rooftop solar by expanding permitted development rights, thus removing the need for bespoke consents for each installation.

Nuclear. Nuclear energy is a key feature of the Strategy. The ambition is to increase nuclear output threefold to 24GW by 2050, representing 25% of forecast electricity demand. In addition to further government funding, a new body called "Great British Nuclear" will be established and tasked with helping nuclear projects through the development process. The Strategy confirms that the government will work with regulators to streamline the consenting and licensing process. By 2030, up to eight new nuclear reactors might be in progress.

Hydrogen. The government aims to double existing low-carbon hydrogen production to 10GW by 2030, with at least half derived from electrolytic hydrogen (which does not require the use of natural gas). It will run annual allocation rounds for electrolytic hydrogen, moving to price competitive allocation by 2025, as well as designing new business models for hydrogen transport and storage infrastructure by 2025.

Oil and Gas. In addition to renewable energy commitments, the Strategy outlines plans for another licensing round for new North Sea oil and gas projects in the autumn of 2022. The government remains "open-minded" about onshore reserves (i.e., fracking). Whether or not this might jeopardize the United Kingdom's compliance with its net-zero targets, though, and therefore lead to legal challenges, remains to be seen.

The Strategy aims to secure a clean and green power supply "that is made in Britain, for Britain." However, as the Climate Change Committee comments, for these plans to be realized, "government, business and industry will need to focus relentlessly on delivery at a scale and pace as yet unseen."

— Will Land (+44.20.7039.5645, wland@jonesday.com)
— Christopher Papanicolaou (+44.20.7039.5321, cpapanicolaou@jonesday.com)