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ANNEX

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to the

Commission Implementing Decision (EU).../...

adopting guidelines for the implementation of certain selection criteria for net-zero strategic projects laid down in Article 13 of Regulation (EU) 2024/1735 of the European Parliament and of the Council

ANNEX

Guidelines for the implementation of certain selection criteria for net-zero strategic projects laid down in Article 13(1) of Regulation (EU) 2024/1735[1]

1. General considerations

Member States shall recognise as net-zero strategic projects, net-zero technology manufacturing projects located within the Union that contribute to the achievement of the objectives set out in Article 1 of Regulation (EU) 2024/1735, and which satisfy at least one of the criteria set out in Article 13(1) of that Regulation.

In assessing whether a project meets the objectives set out in Article 1 of Regulation (EU) 2024/1735, Member States may consider whether the project is in line with the Union's long-term climate and energy goals, including its impact on the resilience and sustainability of net-zero supply chains. Member States should take into account the control of the undertakings involved and the relative involvement of each undertaking in the project, especially in view of potential influence by third country actors. Control should be interpreted as defined in Article 3(2) and (3) of Council Regulation (EC) No 139/2004.

To ensure uniform application of the criteria, applications of net-zero technology manufacturing projects to be recognised as net-zero strategic projects shall be submitted to the relevant Member State using the pre-set form provided on the Commission's official website[2].

The Commission strongly encourages Member States to follow the application process thereby described. This process is designed to facilitate the preparation, secure submission and review of applications for net-zero strategic project status. Member States are also encouraged to designate a national contact point responsible for processing applications for net-zero strategic project status.

The national contact point is to coordinate the evaluation of the selection criteria set out in Article 13 of Regulation 2024/1735. They should ensure that the application process follows a coherent and structured approach, while facilitating prompt and accurate communication between national authorities and the Commission. Making the contact point an integral part of the application procedure helps Member States to ensure that the procedure is streamlined and efficient, improving coordination with the Commission and increasing the transparency of the evaluation process.

2. First-of-a-kind manufacturing facility

The term 'first-of-a-kind' manufacturing facility referred to in Article 13(1), point (b), of Regulation (EU) 2024/1735 is defined in Article 3(32) of that Regulation as 'a new or substantially upgraded net-zero technology facility which provides innovation with regard to the manufacturing process of the net-zero technology that is not yet substantively present or committed to be built within the Union'. Therefore, a first-of-a-kind facility is a facility that (i) is producing net-zero technologies listed in Article 4 of that Regulation and (ii) features an innovation capability with regard to the manufacturing process of net-zero technology that is

[1] Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem and amending Regulation (EU) 2018/1724, OJ L, 2024/1735, 28.6.2024, ELI: http://data.europa.eu/eli/reg/2024/1735/oj).

[2] https://single-market-economy.ec.europa.eu/industry/sustainability/net-zero-industry-act/strategic-projects-under-nzia/strategic-projects-application-process_en

not yet substantially present or planned to be built in the Union in the sense that a facility capable of producing a comparable product, process or performance should not already exist or be committed to being built in the Union. The innovation capabilities should not include minor changes or improvements.

The concept of 'innovation' referred to in point (ii) shall be guided by its wider application in the Union legislative framework, including Regulation (EU) 2023/1781 of the European Parliament and of the Council[3]. Where an innovation is already in use in Research and Development or small-scale production in the Union, new large-scale production of that innovation may still be considered as not yet substantively present within the Union. A facility using an innovative material for the first time in the Union could qualify as first-of-a-kind, even if that material has been tested in pilot facilities within the Union. Parallel projects occurring at the same time may also be recognized under this classification.

3. Best available net-zero technology

The term 'best available' in the context of 'net-zero technology' and 'manufacturing capacity' is referred to in Article 13(1), point (b) and in Article 13(2), point (a), of Regulation (EU) 2024/1735. 'Manufacturing capacity' is defined in Article 3(33) as the 'total amount of output capacity of the net-zero technologies produced in a manufacturing project or, where a manufacturing project produces specific components or specific machinery primarily used for the production of such products rather than the final products themselves, the output capacity of the final products for which such components or specific machinery are produced'.

The concept of 'best available' technology manufacturing capacity shall be interpreted taking into account the broader context of Regulation (EU) 2024/1735 and the Union legislative framework, including Directive (EU) 2024/1785[4] of the European Parliament and Council, which defines 'best' and 'available techniques'. While this definition applies to environmental performance, it can be adapted and applied with respect to net-zero technology manufacturing practices. Accordingly, 'best available' technology manufacturing indicates the most effective and advanced activities and operational methods developed, with the emphasis on the technological efficiency and innovation of the manufacturing practices.

'Best available' technology referred to in Article 13 of Regulation (EU) 2024/1735 shall be understood as follows:

(a) 'best' manufacturing capacity is the same as the most effective and advanced stage in the development of manufacturing activities and their methods of operation which demonstrates the practical suitability of particular techniques.

(b) 'available technology' is the same as net-zero technologies that are developed at a scale that allow for their implementation in the relevant industrial sector under economically and technically viable conditions, considering the costs and benefits involved, regardless of whether such technologies are produced or

[3] Regulation (EU) 2023/1781 of the European Parliament and of the Council of 13 September 2023 establishing a framework of measures for strengthening Europe's semiconductor ecosystem and amending Regulation (EU) 2021/694 (Chips Act)(OJ L 229, 18.9.2023, p. 1, ELI: http://data.europa.eu/eli/reg/2023/1781/oj).

[4] Directive (EU) 2024/1785 of the European Parliament and of the Council of 24 April 2024 amending Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC on the landfill of waste (OJ L, 2024/1785, 15.7.2024, ELI: http://data.europa.eu/eli/dir/2024/1785/OJ).

already in use within the Union, provided they are reasonably accessible to operators.

Where the net-zero technology concerned already fall within the scope of existing Union legislation regarding environmental performance, such as, but not limited to, Directive 2009/125/EC of the European Parliament and of the Council[5] and Regulation (EU) 2017/1369 of the European Parliament and of the Council[6], net-zero technologies in the highest or second-highest energy efficiency class shall be considered the best available if it belongs to the highest or second highest populated class of the applicable performance classes.

4. Significant manufacturing capacity

At least one of the following methods shall be used to determine whether manufacturing capacity can be considered as 'significant' in accordance with Article 13(1), point (a)(ii), of Regulation (EU) 2024/1735.

(a) Where a net-zero technology manufacturing project's planned production capacity per year can be measured in gigawatt (GW), a capacity equal to 1 GW or more per year for at least one final product, specific component, or specific machinery primarily used for the production of net-zero technologies at a single production site shall be considered significant.

(b) Where a net-zero technology manufacturing project's planned production capacity per year cannot be measured in GW, its planned capacity may be considered significant if it equals or exceeds the production capacity per year of any of the top five net-zero technology manufacturing projects of the same or equivalent type already operating in the Union, whose yearly production capacity shall be calculated based on market data for the previous year that is derived from credible sources such as technical reports and market intelligence.

(c) Where net-zero technology manufacturing projects are vertically integrated production sites, their capacity may be considered significant if more than one final product, specific component or specific machinery primarily used for the production of net-zero technologies are to be produced at the same site.

(d) Where the Union's current production capacity of a final product, specific component or specific machinery primarily used for the production of net-zero technologies is below the 40% benchmark set in Article 5(1), point (a), of Regulation (EU) 2024/1735, a lower production capacity than the production capacity established in points (a) and (b) in this section may also be considered 'significant'.

In determining whether a project provides significant manufacturing capacity in accordance with points (a) to (d), Member States may in addition also consider whether the project is in line with the Union's strategic priorities, supply chain resilience and environmental sustainability.

5. Guidance on other criteria set out in Article 13 of Regulation (EU) 2024/1735

(a) Environmental sustainability

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[5] Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast) (OJ L 285, 31.10.2009, p. 10, http://data.europa.eu/eli/dir/2009/125/oj).

[6] Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1, ELI: http://data.europa.eu/eli/reg/2017/1369/oj).

To determine if a project meets the criterion under Article 13(1), point (c), of Regulation (EU) 2024/1735, a project should demonstrate that the adopted practices significantly and permanently reduce CO_2-equivalent (CO_2-eq) emissions, whilst optimising environmental co-benefits on emissions of pollutants to air, water and soil as well as on energy, water and material efficiency and on the use of hazardous substances. Those reductions shall be:

(i) based on the estimated tonnes of CO_2-eq avoided, using clearly defined assumptions and methodology;

(ii) a core objective of the project and contribute substantially to lowering emissions in line with the Union's climate and energy goals.

The Member State processing the request for net-zero strategic project status shall ensure that emissions are not simply shifted to another sector but result in an overall reduction of CO_2-eq emissions. Furthermore, any of the practices listed in Article 13(1), point (c), of Regulation (EU) 2024/1735 are required to reduce emission rates of CO_2-eq both significantly and permanently.

(b) The 50% import dependency threshold

For the purposes of Article 13(1), point (a)(i), of Regulation (EU) 2024/1735, the threshold of 50 % import dependency shall be understood as the ratio between the cumulative imports to the Union from all third countries combined and the Union supply.

The updated information that the Commission is to provide in accordance with Article 29(2), second subparagraph, of Regulation (EU) 2024/1735, can, where available, be used by Member States as a point of reference when determining the import dependency. In the absence of such information, Member States may determine the import dependency on the basis of other credible sources such as technical reports and market intelligence.

(c) Significant share of world production and crucial role in resilience

For the purposes of Article 13(1), point (a)(iii), of Regulation (EU) 2024/1735,

(i) the term 'significant share of world production' shall be understood as manufacturing capacity exceeding 15% of the global manufacturing capacity, which corresponds to the benchmark for global manufacturing set out in Article 5(1), point (b), of Regulation (EU) 2024/1735 and which is to be established on the basis of the Commission's monitoring of the Union's progress in meeting that benchmark pursuant to Article 42(1), point (b), of that Regulation.

In the absence of such relevant information, the applicant for net-zero strategic project status may provide the Member State a point of reference on the basis of credible technical reports and market intelligence.

(ii) Furthermore, the term 'crucial role in the resilience of the Union' in Article 13(1), point (a)(iii), of Regulation (EU) 2024/1735 shall be interpreted as a project's direct impact on the Union's supply chain security, energy independence, or strategic autonomy.