



## FOCUS ON HYDROGEN: THE EUROPEAN HYDROGEN BANK

One of the first measures announced by the European Commission President von der Leyen, in her September 2022 State of the Union speech, was the creation of a new European Hydrogen Bank (EHB). Six months later, in March 2023, as part of the EU Green Deal Industrial Plan, the European Commission (the Commission) has released a Communication on the EHB to stimulate and support investment in sustainable hydrogen production.

In March 2023, the Commission rolled out a package of legislative and regulatory proposals in the context of the EU Green Deal Industrial Plan aiming at strengthening the resilience and competitiveness of net zero technologies manufacturing in the EU. In this context, the proposed structure and operation of an EHB aims primarily to create an EU domestic hydrogen market and eventually to support imports to the EU by accelerating investment and bridging the relevant investment gap.

### What is the EHB?

There has been some uncertainty following President von der Leyen's initial announcement about the EHB as being one of the measures of the Hydrogen Accelerator. On 16 March 2023, the Commission presented a Communication specifying the scope and structure of the new EHB that will aim to close the investment gap and address the REPowerEU 2030 supply and demand target of 20 million tonnes of renewable hydrogen.

### How will it work?

The EHB will be an instrument implemented by the European Commission, based on four pillars: (i) domestic market creation; (ii) imports to the EU; (iii) transparency and coordination; and (iv) financing mechanisms to support renewable hydrogen production within the EU and internationally. The proposed financing mechanisms for the creation of *domestic hydrogen market* and the support of *international hydrogen production* will operate as follows:

#### Domestic hydrogen production

- *Fixed premium auctions to support EU-based production* - the Commission is currently in the process of designing an auction system for renewable hydrogen production to support producers through a fixed-price payment per kilogram of hydrogen produced for a maximum of ten years of

#### Key issues

- Two financing mechanisms: (i) fixed premium auctions, and (ii) auctions-as-a-service for Member States.
- First pilot auctions expected to be launched in autumn 2023, backed by EUR 800 million from the Innovation Fund.
- H2Global-like mechanism to be designed for the support of H2 production in third countries as of 2024.

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- *EU Auction Platform: Auctions-as-a-service for Member States* - in order to prevent market *fragmentation* amongst Member States due to the differences in national support schemes and fiscal space, the EHB will create an EU auction platform offering "auctions-as-a-service" for Member States, using both Innovation Fund and Member State resources, to fund renewable hydrogen projects without prejudice to EU State aid rules. This way, the Commission would run a single auction whereby once the Innovation Fund budget is used, the remainder of the supply curve will be supported by Member States, following the ranking of the EU auction platform, until the Member States' respective budget is exhausted and provided that sufficient national projects participate in relation to the respective committed national resources.

### **International Hydrogen Production**

In its REPowerEU Communication, the Commission proposed the import of 10 million tonnes of renewable hydrogen by 2030, in addition to the 10 million tonnes of renewable hydrogen production in the EU, making the EU the largest aspiring renewable hydrogen market in the world. Several Member States have developed strategies to support the import of hydrogen from third countries, with Germany leading the way having already designed and launched a double-auction support scheme, H2Global.

Therefore, the Commission intends to design an international element of the EHB to promote a coordinated EU strategy for renewable hydrogen to cover the cost gap between renewable hydrogen produced in third countries and transported to the EU, and the fossil fuels it can replace within the EU. Over time, the initial concept of green premium auctions could be extended to further reduce the risk stemming from the uncertainty of off-take agreements. This could follow the German H2Global model, establishing an intermediary to implement double-sided auctions.

In terms of sources of funding, the Commission will continue to explore possible options within the EU budget or in partnership with the EIB. The current Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI-GE) cannot be used for paying for commodities used in the EU, but it could cover the green premia paid to producers of renewable hydrogen in third countries.

### **When will it happen?**

The Commission intends to operationalise all four pillars of the EHB and launch the first auction by the end of 2023. The fixed-premium auction design for the 2023 pilot auctions is currently being developed by the Commission with input from all relevant stakeholder groups. A final workshop on the final terms and conditions of the full design will be held in May 2023 to ensure that the first EU-wide auction is compatible with the needs and practices of the private sector.

The Commission will consult stakeholders on other aspects, such as the use of bid or completion bonds in line with the legal framework defined in the revised EU ETS Directive, the ceiling price and maximum realisation periods. The Commission will then finalise the terms of the eligibility, auction clearing and payments (as well as termination and penalties) and publish these in

summer 2023. Additional info-days on how to prepare a bid will be held in late summer 2023 to allow bidders sufficient time to familiarise themselves with the auction process and requirements.

With respect to the auctions for renewable hydrogen production in third countries, by the end of the year the Commission will develop a "Team Europe" initiative to pool Member State resources and to facilitate synergies with existing EU funds and the Global Gateway Strategy, exploring the possibility of including a mechanism for demand aggregation and joint auctioning of renewable hydrogen in the future within the scope of activities of the EHB.

## Key considerations

As discussed in our client briefings on the European [Net Zero Industry Act \(NZIA\)](#) and the [Critical Raw Minerals Act](#), measures taken by the US (e.g., the Inflation Reduction Act (IRA), the Bipartisan Infrastructure Act, etc.) to improve its economic competitiveness, innovation and industrial productivity, accelerated the rollout of EU proposals committing to more ambitious policies within the framework of the Green Deal.

The EHB is built upon the German H2Global initiative, which paved the way introducing a novel double-auction scheme based on a mechanism analogous to the contracts-for-difference approach covering the difference between supply and demand prices.

It is evident that the EU approach differs significantly from the IRA tax credit for the production of clean hydrogen. This is because of the differences in the regulatory and competition law frameworks in the two jurisdictions. Under EU law, the IRA tax credits are translated into state aid, and state aid is in principle considered incompatible with the EU internal market except if it supports certain policy objectives and if certain criteria are met.

In this context, the Commission argues that the size of the EU financial support to sustainable investments and reforms is equivalent to that provided under the IRA, but the grant / loan award criteria differ ensuring the necessity and appropriateness of the aid as well as the proper functioning of the internal market preventing any restriction or distortion of competition.

It remains to be seen how the EHB will operate and contribute to the creation of an emerging renewable hydrogen market that in its early stages will undoubtedly rely heavily on subsidies.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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## ABOUT

Focus on Hydrogen is a Clifford Chance briefing series covering hydrogen-related developments globally. 1.008 is the standard atomic weight of hydrogen.

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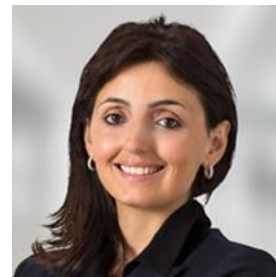
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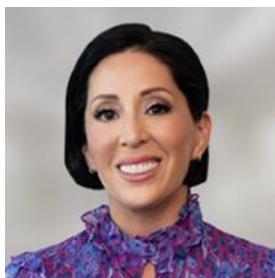
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