



## PUBLIC LAW AND ENERGY AND NATURAL RESOURCES

# Industry decarbonisation incentive scheme

## 1. Background

Under the Recovery and Resilience Programme (RRP), a set of investments and reforms aimed at restoring sustained economic growth after the pandemic was defined with several components: resilience, climate transition and digital transition. As part of the climate transition dimension, the industry decarbonisation component is intended to leverage the decarbonisation of the industrial and business sector and bring about a paradigm shift in the use of resources by implementing measures of the 2030 National Energy and Climate Plan (PNEC 2030)<sup>1</sup> and helping accelerate the transition to a carbon-neutral economy.

Against this background, on 29 December 2021, Ministerial Order 325-A/2021 was published in the Official Gazette to approve the Regulations of the “Decarbonisation of Industry” Incentive Scheme.

This incentive scheme, which is funded by the RRP, is applicable throughout Portugal to economic activities in the industry sector, extractive industries (Section B, divisions 05 to 09 of CAE Rev. 3) and manufacturing industries (Section C, divisions 10 to 33 of CAE Rev. 3). The aim of this scheme is to promote and financially support projects relating to (i) low-carbon processes and technologies in industry; (ii) the adoption of energy efficiency measures in industry; and (iii) the incorporation of energy from renewable sources and energy storage.

The Ministerial Order came into force on 30 December 2021.

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<sup>1</sup> See PLMJ Informativa Note of 16 July 2021 [National Energy and Climate Plan 2030 | Towards a carbon neutral future - Informative Notes - Knowledge - PLMJ Transformative Legal Experts](#)

## 2. Beneficiaries and eligibility

The beneficiaries of the decarbonisation incentives are “companies, of any size or legal form, in the industrial area, as well bodies that manage industrial zones whose investments may impact the reduction of greenhouse gas emissions in the industries operating in the areas under their management”.

To be eligible, candidates must meet several requirements including, by way of example, the following: (i) They must have met all their tax and social security obligations; (ii) They must have the technical, physical and financial means and human resources necessary to develop the operation; (iii) They must have settled all claims relating to ESIF financing; (iv) They must declare and prove that they are not “companies in difficulty”, within the meaning of Article 2(c) of the Ministerial Order; among others.

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If the projects in question require industrial or environmental licensing, applicants can only begin to implement them after indication of the correct eligibility of all schemes covered and their approval by the Coordinating Body. In other words, they must have obtained the necessary licensing or authorisations associated with the project, in particular, the authorisations provided for in Decree-Law 127/2013, of 30 August, which establishes the Industrial Emissions Framework applicable to Integrated Pollution Prevention and Control.

Equally worthy of note is the fact that the Ministerial Order makes use of the concept of “do no significant harm” (DNSH) to state that companies that pursue activities that cause significant harm to any environmental objective are not eligible for the incentive scheme provided for in the Order. Within the meaning of Article 17 of Regulation (EU) 2020/852<sup>2</sup> of the European Parliament and of the Council, these are activities which significantly harm the environment, for example, those which give rise to significant greenhouse gas emissions, those which damage the good status or good ecological potential of bodies of water or marine waters, and those which lead to a significant increase in the production, incineration or disposal of waste, among others.

## 3. Types of projects and eligibility

As mentioned, the incentives scheme provided for in the Ministerial Order under analysis here is intended to encourage and financially support the following categories of projects:

- i) Low carbon processes and technologies in industry:
  - o Introduction of new processes, products and innovative business models or the alteration of processes to decarbonise and digitalise them, including clean and innovative low-carbon technologies and solutions that encourage the efficient use of resources and their circularity, including industrial symbioses, enhancing the sustainability and resilience of value chains;

<sup>2</sup> Amends the Taxonomy Regulation, Regulation (EU) 2019/2088, - PLMJ Informative Note of June 2020. [IN\\_Taxonomy\\_Regulation.pdf \(plmj.com\)](#)

**"The incentives scheme provided for in the Ministerial Order under analysis here is intended to encourage and financially support the uptake of hydrogen and other renewable gases in industry."**

- Incorporation of new raw materials and waste-derived fuels including biomass and biogas;
  - Use of industrial symbioses and circular economy measures, incorporating innovation;
  - Substitution and/or adaptation of equipment and processes for new sustainable technologies and renewable energy;
  - Adoption of fluorinated gases with low global warming potential;
  - Electrification of final energy consumption, specifically through the electrification of final energy consumption in industry and the strengthening of access and quality of service, mainly in industrial areas.
- ii) Adoption of energy efficiency measures in industry:
- Reducing energy consumption and greenhouse gas emissions in parallel with the adoption of monitoring and consumption management systems that make it possible to manage and optimise energy consumption by taking advantage of the potential of digitalisation and automation.
- iii) Incorporation of energy from renewable sources and energy storage:
- Promoting the uptake of hydrogen and other renewable gases in industry, particularly where cost-effective technological options for decarbonisation, including through electrification, are more limited.

To be eligible, projects must: (i) meet the objectives and priorities defined in the calls for proposals (*avisos de abertura de concurso* - AAC), (ii) start their works after the date of the application, and (iii) comply with the applicable Portuguese and European laws and regulations.

#### **4. Applications and procedures**

The applications are presented under the process for calls for proposals (AAC) and are submitted through an electronic form, available on IAPMEI's website. They are selected based on an evaluation that takes into consideration the following criteria: (i) emissions; (ii) technical maturity; (iii) financial maturity; and (iv) reduction of consumption.

The admission, analysis and selection of applications is done by IAPMEI, with the support of the Coordinating Committee for industry decarbonisation initiatives. Besides IAPMEI, this committee includes the Management Authority of the Competitiveness and Internationalisation Operational Programme (COMPETE), the National Innovation Agency (ANI), the Portuguese Environment Agency (APA) and the Directorate-General of Energy and Geology (DGEG).

The projects will be ranked in descending order of final classification and the applications that achieve the maximum amount established in the AAC will be selected for co-financing. A list of applications ranked according to the merit score obtained will be drawn up for this purpose.

The decision on the applications will be taken by IAPMEI within 60 business days of the deadline for submitting the application. After the communication of the decision, the beneficiary entity has 30 working days, from the date of notification of the decision to sign the statement of acceptance, under penalty of forfeiture.

## 5. Form of support

The support is granted as a non-refundable incentive and it is subject to the maximum co-financing rates on the expenses considered eligible. These expenses are listed in Annex I of the Ministerial Order, which establishes the potentially applicable aid categories.

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By way of example, investment aid for high efficiency cogeneration and investment aid to encourage energy produced from renewable sources will be considered. There is a threshold of EUR 15 million euros per company and per project, with a minimum support rate that varies between 30% and 40%. There is also the possibility of top-ups according to the size of the company and the location of the investment.

There is also aid for environmental studies. This has a ceiling of EUR 15 million per company and per project, and a minimum rate of support of 50%. Top-ups are possible depending on the size of the company and the location of the investment. Moreover, there is investment aid for the rehabilitation of contaminated sites, with a ceiling of EUR 20 million and a maximum rate of support of 100%.

The following, for example, will not be eligible: the beneficiary's normal operating costs, value added tax (VAT), the purchase of motor vehicles, interest and financial charges, working capital, ongoing advertising, investment in the production of renewable gases, investment in the purchase and installation of fossil fuel-consuming equipment.

## 6. Beneficiaries' obligations and follow-up

Besides the other obligations described in the Ministerial Order, the beneficiaries will have to start the investments within a maximum of six months of receiving notification of IAPMEI's decision, except for reasons not attributable to the beneficiary, which must be accepted by IAPMEI.

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If no longer period is established by the applicable European legislation or by the state aid rules, the beneficiaries are obliged to maintain the productive investment or financed infrastructures and to allocate them to their activity for at least five years. This is reduced to three years in the case of SME investments. In both cases, the period starts to run from the date of the final payment to the end beneficiary.

The approved projects are subject to management checks, under the terms to be defined by IAPMEI. They are also subject to an audit at the end of the project and this will include an on-site inspection. ■