EUROPEAN COMMISSION

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SENSITIVE[*]: *COMP Operations*

Subject: **State Aid SA.101739 (2022/EV) – Portugal**
RRF – Evaluation plan for the block-exempted scheme
"Descarbonização da Indústria"

Excellency,

1. PROCEDURE

(1) On 28 January 2022, Portugal submitted summary information pursuant to Article 11(a) of Commission Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty[1] (hereinafter "**GBER**") on aid scheme "Descarbonização da Indústria" (hereinafter "**the scheme**"), registered under SA.101739 (2022/X).

(2) The scheme has an estimated annual average budget of EUR 176.25 million, which will be funded with Recovery and Resilience Facility funds. Pursuant to Article 1(2)(a) of the GBER, the GBER does not apply to aid schemes with an average annual budget exceeding EUR 150 million from six months after their entry into force. However, the Commission may decide that the GBER shall continue to apply for a longer period to such aid schemes following the assessment of an evaluation plan of the scheme to be notified by the Member State concerned.

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[1] OJ L 187, 26.6.2014, p. 1.

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(3) The scheme allows the granting of aid in the form of direct grants for investments aimed at the decarbonisation of industrial activities through the implementation of low-carbon processes and technologies, the adoption of energy efficiency measures and the use of renewable energy.

(4) The legal act on which the scheme is based was published on the Portuguese official journal on 29 December 2021 and it entered into force on 30 December 2021. Funding is provided on the basis of the State aid provisions for investment aid enabling undertakings to go beyond Union standards for environmental protection or increase the level of environmental protection in the absence of Union standards (Article 36 of the GBER), investment aid for early adaptation to future Union standards (Article 37 of the GBER), investment aid for energy efficiency measures (Article 38 of the GBER), investment aid for high-efficiency cogeneration (Article 40 of the GBER), investment aid for the promotion of energy from renewable sources (Article 41 of the GBER), investment aid for the remediation of contaminated sites (Article 45 of the GBER) and aid for environmental studies (Article 49 of the GBER). Aid may be granted under the scheme until 31 December 2025.

(5) In order to obtain the prolongation of the application of the GBER beyond the period set up in Article 1(2)(a) of the GBER, the Portuguese authorities notified an evaluation plan on 1 February 2022, registered by the Commission as SA.101739 (2022/EV).

(6) A telephone conference between the Portuguese authorities and the Commission services took place on 15 February 2022, following which the Portuguese authorities submitted a second version of the evaluation plan on 14 March 2022. A second telephone conference between the Portuguese authorities and the Commission services took place on 26 April 2022.

(7) The Commission's Joint Research Centre provided its feedback on the second version of the evaluation plan on 5 April 2022. By emails of 5 April, 12 April, 18 May and 14 June 2022, the Commission services invited the Portuguese authorities to submit additional information necessary for the assessment of the notified evaluation plan. The Portuguese authorities submitted the required information by emails of 5 May, 9 June and 14 June 2022. On the latter date, the Commission disposed of all the necessary information to take a position on the notified evaluation plan.

(8) Portugal exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU"), in conjunction with Article 3 of Regulation 1/1958[2] and to have this decision adopted and notified in English.

[2] Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

2. DETAILED DESCRIPTION OF THE KEY ELEMENTS OF THE NOTIFIED EVALUATION PLAN

(9) As required by Article 2(16) of the GBER and in line with best practices[3], the evaluation plan is to contain the description of the following main elements: (i) the objectives of the aid scheme to be evaluated, (ii) the evaluation questions, (iii) the result indicators, (iv) the envisaged methodology to conduct the evaluation, (v) the data collection requirements, (vi) the proposed timing of the evaluation (including the date for submission of the final evaluation report), (vii) the approach for the selection of the independent body conducting the evaluation, and (viii) the modalities for ensuring the publicity of the evaluation.

(10) The evaluation plan and the future evaluation will help to ensure that similar schemes will be more effective in the future and will create less distortion in markets (if any). The evaluation will also improve the efficiency of similar schemes and, possibly, of future rules for granting State aid in this area.

2.1. Objectives of the aid scheme to be evaluated

(11) The aid scheme aims at accelerating the transition to a carbon-neutral economy by promoting the decarbonisation of Portuguese industry and a paradigm shift in resource use, in line with Portugal's Recovery and Resilience Plan and its National Energy and Climate Plan for 2021-2030.

(12) Eligible undertakings are undertakings of any size and legal form active in the mining[4] and manufacturing[5] sectors, as well as entities managing industrial parks.[6]

(13) Funding is provided for:

a) Investments related to the implementation of low-carbon processes and technologies in industry (e.g. the introduction of recycled and renewable raw materials, the switch to alternative fuels derived from non-fossil waste and the implementation of smart solutions for tracking and reducing pollutant emissions and increasing resource efficiency);

b) Investments aimed at improving the energy efficiency of industrial processes (e.g. the replacement of boilers or other equipment with more energy efficient equipment, the optimisation of processes to reduce energy consumption, and the implementation of digital energy management systems); and

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[3] Commission Staff Working Document on Common methodology for State aid evaluation, Brussels, 28.5.2014, SWD(2014) 179 final.

[4] Category B under the Portuguese classification of economic activities.

[5] Category C under the Portuguese classification of economic activities.

[6] Pursuant to Decree-Law No. 232/92 regulating the installation and management of industrial parks.

c) Investments in renewable energy generation and/or storage (e.g. the installation of equipment for the production of renewable heat or cold such as heat pumps, the installation of high-efficiency cogeneration systems based on renewable energy sources, and the acquisition of energy storage systems).

2.2. Evaluation questions and result indicators

(14) The notified evaluation plan identifies the issues to be addressed by the evaluation.

(15) The evaluation questions address the incentive effect of the aid on the beneficiaries, the scheme's indirect effects, in terms of both positive and negative externalities, and the appropriateness and proportionality of the aid. The result indicators are linked to the evaluation questions and to the objectives of the scheme.

(16) The direct effects of the aid on the beneficiaries will be addressed, among others, by evaluation questions on whether and to what extent the aid has led to (1) a decrease in the respective fuel consumption of the aid beneficiaries; (2) an increase in their investments in renewable energy generation and storage equipment; (3) a decrease (or an increase) in their electricity consumption; (4) a reduction of their greenhouse gas emissions; and (5) an increase of green jobs in the aid beneficiaries.[7]

(17) With regard to the evaluation questions on direct effects, one of the result indicators will be the level of greenhouse gas emissions per unit produced. In addition, further indicators will be used, including: (1) fuel expenditure relative to production; and (2) electricity expenditure relative to production. Further, the following control variables will be considered: (1) the level of qualifications of employees; (2) the beneficiary's financial autonomy;[8] (3) its liquidity;[9] and (4) the coverage of interest costs.[10] Some of the questions on direct effects will instead be assessed using qualitative approaches, due to the lack of readily available data (recital (23)).

(18) The evaluation will also address and examine the possible indirect effects of the aid scheme. The questions regarding indirect effects will assess whether the aid has led to: (1) a strengthening of the market position of the aid beneficiaries; and (2) a change in other firms' perception of the benefits of carrying out the relevant investments for their competitiveness. Among other indicators, the evaluation will rely on the evolution of the market shares of the undertakings concerned.

[7] Green jobs are defined as functions that increase efficiency in energy and raw material consumption; limit greenhouse gas emissions; minimise waste and contamination; protect and restore ecosystems; and contribute to adapting to climate change.

[8] Measured through the equity-assets ratio.

[9] Measured through the current liabilities-assets ratio.

[10] Measured through the operating result-interest ratio.

(19) Finally, the evaluation will assess the appropriateness and proportionality of the aid, through, among others, questions on: (1) whether the aid amount exceeds the minimum necessary for companies to decarbonise their production processes; (2) the effect of the aid intensity bonuses on the beneficiaries' fuel and electricity expenditure and their reduction of greenhouse gas emissions; and (3) the additional effect of the aid on fuel and electricity expenditure and greenhouse gas emissions reduction as compared to other public policies and support measures. The indicators to be used are the same as those used for the evaluation questions on direct effects.

2.3. Envisaged evaluation methodology

(20) The Portuguese authorities intend to primarily employ quantitative methods (i.e. counterfactual analysis) to assess the impact of the scheme. The Portuguese authorities claim that they will employ the most robust methodologies, given the nature of the different indicators to be measured and the availability of the data.

(21) The main envisaged methodology is the so-called *Regression Discontinuity Design* ("RDD", as described in the Commission Staff Working Document on Common methodology for State aid evaluation[11]), which exploits the existence of a variable which has a discontinuous impact on the probability to be affected by a policy. The RDD method will be employed for measuring any given evaluation indicator, where the probability to receive aid is discontinuous, while all the other variables are continuous. As the applicability of the RDD approach may be limited either by the non-verification of its assumptions or by the limited number of available observations, the Portuguese authorities aim to combine it, where possible, with the *Matching – Differences-in-Differences* ("matching - DiD") method[12], in order to ensure the reliability of the evaluation results.

(22) The control group to be created using RDD will comprise the companies that applied for aid under the scheme but were ultimately not selected as beneficiaries. The Portuguese authorities are of the opinion that the unsuccessful applicants whose applications ranked close to the selection threshold constitute a potentially appropriate control group, assuming that the factors suspected of being distorting factors will be similar on both sides of the threshold. The possibility of effectively using RDD will depend on the number of aid applicants and on the applicants' characteristics. If the unsuccessful applicants were too different from the successful applicants, the Portuguese authorities will use matching techniques to create the control group.

(23) The Portuguese authorities consider that it will not be possible to use the above mentioned quantitative methods with respect to all of the evaluation questions and indicators, due either to the unavailability of the data required or the impossibility to define a control group. For instance, the Portuguese authorities submit that there are not enough valid observations from supported companies and companies in the control group concerning green jobs, and that there is also a lack of administrative and statistical data. Therefore, the Portuguese authorities propose

[11] Commission Staff Working Document on Common methodology for State aid evaluation, pp. 28-29.

[12] Commission Staff Working Document on Common methodology for State aid evaluation, pp. 20-21 and 22-25.

to complement the quantitative analyses with theory-based approaches.[13] Theories will be built and verified by conducting interviews, organizing focus groups and administering questionnaires. Such qualitative methods will also be used for assessing other indicators, in addition to the quantitative methods described above.

2.4. Data collection requirements

(24) The evaluation will be based on information gathered from several data sources. The evaluators will have access to two databases, namely the Integrated Business Accounts System (SCIE) run by the National Statistics Institute (INE) and the Staff Tables (QP) of the Ministry of Labour, Solidarity and Social Security (MTSSS). The evaluators will also rely on the company surveys carried out annually by the Portuguese Environment Agency (APA) as well as on audits carried out by the Energy Intensive Consumption Management System (SGCIE).

(25) All of those data sources provide annual information at the individual company level, except as regards the information on greenhouse gas emissions of energy intensive users, which is reported biannually. The confidentiality of the data will be ensured throughout the process.

(26) The abovementioned data sources will be used as regards both the aid beneficiaries and the control group.

2.5. Proposed timing of the evaluation, including the date of submission of the final evaluation report

(27) The evaluation is planned to start upon selection of the independent body to conduct the evaluation (recital (33)).

(28) The foreseen duration of the aid scheme is until 31 December 2025 (recital (4)). The expiration date of the GBER currently in place is 31 December 2023.[14] Article 58(5) GBER sets a six-month adjustment period during which any aid scheme exempted under the current GBER shall remain exempted. Therefore, beyond 30 June 2024, the Portuguese authorities will ensure that the scheme is in conformity with the amended GBER, amend it if necessary, and submit a new information sheet.

(29) Following exchanges with the Commission services as regards a smooth transition to the new GBER, the Portuguese authorities have committed to the following timing.

(30) The Portuguese authorities will submit to the Commission the final evaluation report by 30 September 2023 at the latest. The final report shall contain a detailed description of the data and the methodologies that will be used for the evaluation and (if available) descriptive statistics and a preliminary analysis of the available data. This methodological document will serve as the basis for the evaluation plan of the eventual subsequent scheme.

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[13] European Commission, Theory-based impact evaluation FAQs, available at: https://ec.europa.eu/regional_policy/en/policy/evaluations/guidance/impact_faq_theor.

[14] Article 59 of the GBER.

(31) In addition, the Portuguese authorities will submit an additional evaluation report presenting the full results of the evaluation exercise. If the Portuguese authorities decide to prolong the duration of the scheme beyond the current end date of 31 December 2025, they will submit the additional report at the latest six months before the end of the scheme's validity, i.e. by 30 June 2025. Conversely, if the Portuguese authorities decide not to prolong the duration of the scheme beyond the current end date of 31 December 2025, the additional report will be submitted as soon as sufficient data are available.

(32) The Portuguese authorities commit that, should significant modifications to the evaluation plan become necessary, they will notify to the Commission an updated evaluation plan. The Portuguese authorities also commit to inform the Commission of any element that may affect the implementation of the evaluation plan.

2.6. Selection of an independent body to conduct the evaluation

(33) The independent evaluator will be selected in line with national and EU public procurement rules. For the purpose of ensuring the quality and reliability of the evaluation, the entity selected will be functionally independent from the granting authority and persons that have previously been involved in the design and implementation of the aid scheme will not be eligible to join the evaluating team. In addition, the coordinator of the evaluating team must have at least ten years of experience in assessing the impact of business support policies, and the team as a whole must have the necessary assessment skills, including in the field of decarbonisation policies. The Portuguese authorities consider therefore that the evaluation will be conducted by experts who have the adequate and proven experience and the methodological knowledge to carry out the exercise.

(34) The granting authority will set up and coordinate an evaluation monitoring group, in which public agencies involved in policy design and implementation and other authorities such as the national competition authority will be invited to participate.

2.7. Modalities for ensuring the publicity of the evaluation

(35) The evaluation plan, the final evaluation report, and the additional report will be published on the websites of the Portuguese Agency for Competitiveness and Innovation (IAPMEI) and of the Portuguese Recovery and Resilience Plan. Personal and/or confidential data will be dealt with according to the relevant regulations. The evaluation results will be used by the granting authority and other bodies for the design of subsequent schemes pursuing the same objective. Data collected during the evaluation will be made accessible for further studies under conditions that preserve confidentiality.

(36) Dissemination activities will be conducted, for example by organising workshops with stakeholders in order to gather their feedback on the evaluation results and more generally by stimulating public debate on the evaluation results.

3. ASSESSMENT OF THE NOTIFIED EVALUATION PLAN

(37) The correct application of the GBER is the responsibility of the Member State. The present decision on the evaluation plan does not assess whether the aid scheme to be evaluated was put into effect by the Member State in full respect of all applicable provisions of the GBER. It does therefore neither create legitimate expectations regarding the lawfulness and compatibility of the scheme, nor does it prejudge the position the Commission might take regarding the conformity of the aid scheme with the GBER and its lawfulness and compatibility when monitoring it, or assessing complaints against individual aid granted under it.

(38) Pursuant to Article 1(2)(a) GBER, certain aid schemes[15] within the meaning of Article 2(15) GBER, with an average annual State aid budget exceeding EUR 150 million, are subject to evaluation. The Commission notes that the annual average budget of the aid scheme concerned (i.e. EUR 176.25 million) exceeds the threshold of EUR 150 million laid down in Article 1(2)(a) of the GBER. Chapter I and section 7 (Articles 36, 37, 38, 40, 41, 45, 49) of Chapter III of the GBER constitute the legal basis for the aid scheme to benefit from the exemption from notification provided for in Article 108(3) of the TFEU. However, in the absence of a positive Commission decision on the notifiable evaluation plan, pursuant to Article 1(2)(b) GBER, the exemption expires six months after the entry into force of the measure, and may continue to apply for a longer period only if the Commission decides to authorise this explicitly by the present decision.

(39) As explained in recital 8 of the GBER, the evaluation of large schemes is required "*[I]n view of the greater potential impact of large schemes on trade and competition*". The required *"[E]valuation should aim at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, as well as the effectiveness of the aid measure in light of its general and specific objectives and should provide indications on the impact of the scheme on competition and trade."* State aid evaluation should in particular allow the direct incentive effect of the aid on the beneficiary to be assessed (i.e. whether the aid has caused the beneficiary to take a different course of action, and how significant the impact of the aid has been). It should also provide an indication of the general positive and negative effects of the aid scheme on the attainment of the desired policy objective and on competition and trade, and it could examine the proportionality and appropriateness of the chosen aid instrument[16].

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15 Schemes under Sections 1 (with the exception of Article 15), 2, 3, 4, 7 (with the exception of Article 44), and 10 of Chapter III of this Regulation (Article 1(2)(a) GBER). 'Aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount (Article 2(15) GBER).

16 See Staff Working Document referred to in footnote 2.

(40) In the light of these considerations, based on Article 2(16) of the GBER, an evaluation plan is a document containing at least the following minimum elements: the objectives of the aid scheme to be evaluated (recitals (11) to (13)), the evaluation questions and result indicators (recitals (14) to (19)), the envisaged methodology to conduct the evaluation (recitals (20) to (23)), the data collection requirements (recitals (24) to (26)), the proposed timing of the evaluation including the date of submission of the final evaluation report (recitals (27) to (32)), the description of the independent body conducting the evaluation (recitals (33) and (34)) and the modalities for ensuring the publicity of the evaluation (recitals (35) and (36)).[17]

(41) The Commission considers that, as described in section 2 of this decision, the notified evaluation plan contains those minimum elements outlined in Article 2(16) of the GBER.

(42) The evaluation plan gives a concise description of the key objectives of the scheme concerned and provides sufficient information to understand the underlying "*intervention logic*". The scope of the evaluation is defined in an appropriate way (recitals (11) to (13)).

(43) The evaluation questions are designed in a way as to assess the direct effects of the scheme on the beneficiaries compared to non-beneficiaries, in order to measure the incentive effect of the scheme (recital (16)). The evaluation questions addressing indirect effects are linked to the specificities of the aid scheme, both in terms of objectives and aid instruments (recital (18)). The Commission notes that the evaluation plan also includes evaluation questions aimed at measuring the appropriateness and proportionality of the aid (recital (19)).

(44) The evaluation plan identifies and justifies result indicators that integrate the evaluation questions for the aid scheme concerned (recitals (17) to (19)), and explains the data collection requirements and availabilities necessary in this context (recitals (24) to (26)). The data sources to be used for the evaluation are described clearly and in detail (recitals (24) to (26)). The Commission notes that the evaluation body will be able to take advantage of several different databases, gathering a more complete set of information.

(45) The evaluation plan sets out and explains the main methods that will be used in order to identify the effects of the scheme, and discusses why these methods are likely to be appropriate for the scheme in question. The proposed evaluation methodology sufficiently allows the identification of the likely causal impact of the scheme (recitals (20) to (23)).

(46) The proposed timeline of the evaluation is reasonable in view of the characteristics of the scheme concerned (recitals (27) to (32)).

(47) The proposed criteria for the selection of the evaluation body meet the independence and skills criteria (recitals (33) and (34)).

[17] Further guidance is given in the Staff Working Document referred to in footnote 5.

(48) The proposed modalities for the publication of the evaluation results are appropriate and ensure transparency. In particular, the Commission takes note of the commitment of the Portuguese authorities to disseminate and make publicly available the evaluation plan, the final evaluation report, and the additional evaluation report (recitals (35) and (36)).

(49) In view of the above, the Commission considers that the evaluation plan meets all of the requirements laid down in the GBER, is established in line with the common methodology proposed in the Staff Working Document, and is suitable given the specificities of the aid scheme to be evaluated.

(50) The Commission notes the commitment made by the Portuguese authorities to conduct the evaluation according to the plan described in the present decision. The Commission also notes that the Portuguese authorities will submit a final evaluation report by 30 September 2023 and therefore before the end of the application of the current GBER (recital (30)) and an additional evaluation report by 30 June 2025 – if they intend to prolong the scheme beyond the current duration – or as soon as they have gathered the necessary data (recital (31)). The Portuguese authorities are invited to inform the Commission without delay of any element that might seriously compromise the full and timely implementation of the evaluation plan.

(51) The Commission notes the commitment made by the Portuguese authorities to take into account the evaluation results for the design of any subsequent aid measure with a similar objective.

(52) The Commission reminds that the application of the exempted scheme has to be suspended if the final evaluation report is not submitted in good time and sufficient quality.

(53) Therefore, pursuant to Article 1(2)(a) of the GBER, the Commission decides that the GBER shall continue to apply to the aid scheme for which the evaluation plan was submitted, for a period exceeding the initial six months after the scheme at hand was applied for the first time, until the end of the validity of the current GBER,[18] and as from the date of the notification of this decision to Portugal.

(54) The Commission reminds that alterations to the evaluated scheme, other than modifications which cannot affect the compatibility of the scheme under the GBER or cannot significantly affect the content of the approved evaluation plan, are, pursuant to Article 1(2)(b) of the GBER, excluded from the scope of the GBER, and must therefore be notified to the Commission.

[18] Including the adjustment period of six months set out in Article 58(5) GBER.

4. CONCLUSION

The Commission has accordingly decided:

- that the exemption of the aid scheme for which the evaluation plan was submitted shall continue to apply beyond the initial six-months period until six months after the final date of applicability of Commission Regulation 651/2014 of 17 June 2014, as amended, as laid down in its Article 59.

- to publish this decision on the Internet site of the Commission.

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

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Martine DEPREZ
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