

Sustainability Outlook European Union

October 2021



European Commission starts discussion of an “ecosystem” for energy-intensive industries.

The Commission issued a [Staff Working Document “For a resilient, innovative, sustainable and digital energy-intensive industries ecosystem”](#). Internal Market Commissioner Thierry Breton commented that heavy **industries like steel, cement and mining** provide some of the most **essential** materials needed **for the economy and employment**, and this industrial ecosystem needs to maintain its competitiveness. At the same time, it must **contribute to a climate-neutral Europe** by mid-century. According to the Commission document, the energy-intensive industries ecosystem will help to **enable the decarbonisation** in other ecosystems, considering the whole life cycle of products and services used. Examples of this include the supply of critical raw materials required for solar panels and wind turbines used in the renewable energy ecosystem, as well as bio-based materials used as substitutes for fossil-based ones in, for example, the textile and mobility ecosystems. The Commission also mentions the Renovation Wave ([please see frESH Law Horizons April 2021](#)), which will require more and novel building materials with good insulation properties and a low environmental footprint. It invites stakeholders to [provide comments](#) on key questions, such as **main challenges to ensure resilience** of the industry, **key priority sectors, products and materials, strategic foreign dependencies, supply of strategic inputs** or technologies. The survey closes on 22 November 2021.

European Commission adopts its Work Programme for 2022.

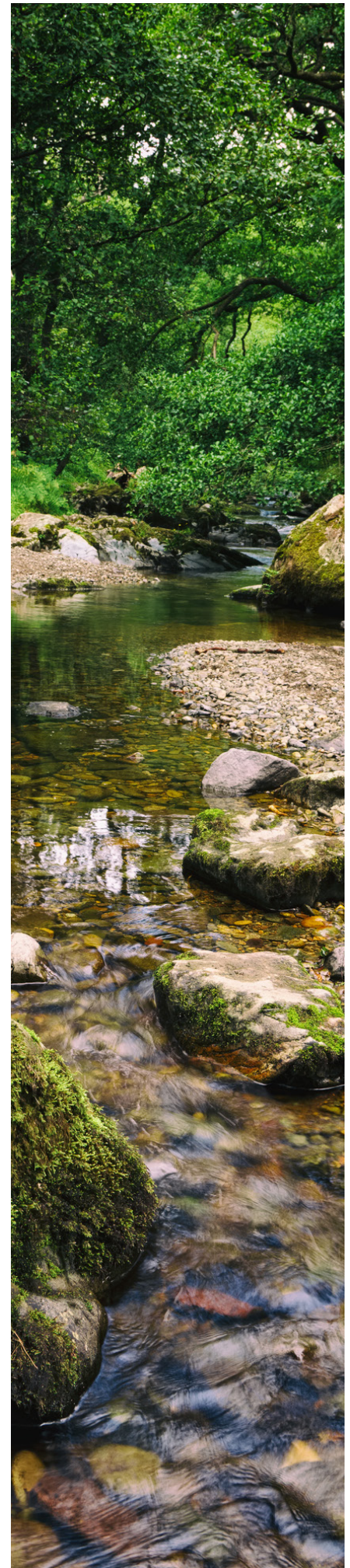
The Commission published its 2022 [Work Programme](#). [Annex I](#) sets out 42 **new** policy and legislative initiatives; [Annex II](#) sets out 26 **REFIT** initiatives to **simplify existing** legislation; [Annex III](#) sets out 76 priority **pending** proposals; [Annex IV](#) lists the intended **withdrawal** of six pending proposals; and [Annex V](#) mentions one envisaged **repeal**.

One of the initiatives that the Commission presents as new is a “**Plastics Package**”, containing three initiatives that the Commission has already announced and/or prepared. Besides the policy framework for **bio-based, biodegradable and compostable plastics** (please see below in this issue), the Commission plans to **restrict intentionally added microplastics** under REACH Regulation 1907/2006. The European Chemicals Agency (ECHA) already prepared such a restriction in 2018. In an informal note to its CARACAL expert group, the Commission stated that it plans to discuss the draft restriction in its REACH Committee in February 2022, and expects to adopt the restriction in Q4 2022. The Commission plans to take measures to **reduce the release of (so-called unintentional) microplastics in the environment**. While the Work Programme lists this as a legislative initiative, it is unclear in its informal note whether it will take the form of a communication directive or regulation, depending on the results of the impact assessment that it is currently conducting (please see [Sustainability Outlook September 2021](#)). The Commission expects to adopt this measure also in Q4 2022.

The Commission plans to present a **proposal for a regulation on the reallocation of EU technical and scientific work on chemicals to EU agencies in Q4 2022**. The initiative aims to streamline the responsibilities of the EU agencies on chemicals, which are currently spread across a variety of actors (in particular between scientific committees, consultants and Commission services), in view of the “one substance, one assessment” principle. The proposal would reduce the burden on stakeholders, as well as on the EU institutions, as using the agencies’ expertise instead of *ad hoc* committees and consultants will lead to synergies and efficiency gains.

However, MEP *Sven Giegold* from the German Green Party [expressed concern](#) that the Commission has not mentioned many of the initiatives it has foreseen for 2021 or 2022 in its [Chemical Strategy for Sustainability](#) in the Work Programme for 2022, which would imply there are **delays**.

Following the adoption of the Work Programme, the Commission will initiate discussion with the European Parliament and the Council to establish a list of joint legislative priorities.





European Commission publishes a roadmap on bioplastics.

The Commission has foreseen a policy framework **on bio-based, biodegradable and compostable plastics** in its 2018 [European Plastics Strategy](#) and its 2020 [Circular Economy Action Plan \(CEAP 2.0\)](#). It recently carried out and requested studies on topics such as [biodegradability of plastics in the open environment](#) and [life cycle assessment \(LCA\) of alternative feedstock for plastics production](#). According to the [roadmap](#), the initiative aims to clarify the role of bio-based, biodegradable and compostable plastics in delivering the Commission's commitments on carbon neutrality and the circular economy. In order to tackle the **widespread confusion** between these materials and their properties (e.g. bio-based does not necessarily mean biodegradable and vice versa), as well as other sustainability challenges not yet addressed by EU legislation, the Commission intends to establish **clear definitions and principles**. It also intends to clarify the **measurement method** and **labelling** of products made of **bio-based** plastics, as well as the **sustainability of biological feedstock**. With regard to **biodegradable** plastics, the initiative aims to clarify definitions, as well as applications where their use can be beneficial for the environment, and the role of **testing, labelling and certification to ensure effective biodegradation** and avoid consumer confusion. The roadmap observes that no standard exists for biodegradable plastics in certain media such as the marine environment.

The Commission plans to adopt this initiative by means of a (non-legislative) communication in Q2 2022.

European Parliament adopts a resolution on methane emissions.

The Parliament has adopted a non-binding [resolution](#) on the [EU Methane Strategy](#) by broad majority. The Commission published this strategy last year (please see [frESH Law Horizons October 2020](#)), setting out future legislative and non-legislative actions to cut anthropogenic methane emissions in Europe and internationally, particularly for the **energy, agriculture and waste** sectors. Now, the Parliament has called for mandatory **monitoring, reporting and verification** (MRV) for all methane-emitting sectors, as well as mandatory **leak detection and repair** (LDAR) programmes for the entire supply chain in the energy and **petrochemicals** sectors. Fossil fuel imports should comply with EU rules on MRV, LDR, venting and flaring in order to be permitted on the EU market. Regarding waste, the text calls on the Commission to set binding **EU targets for commercial and industrial waste** and **cap the generation of residual waste** (in kg/person/year) as part of the planned reviews of the Waste Framework Directive 2008/98 and the Landfill Directive 1991/31 in 2024. The Commission should also produce a best available techniques reference document (**BREF**) for landfilling, including provisions on methane. A part of such BREFs becomes legally binding requirements for permits under the Industrial Emissions Directive (IED) 2010/75.

European Commission consults on the revision of EU rules on air quality.

The Commission has [launched](#) an online public consultation on the revision of the **Ambient Air Quality Directive** 2008/50 and Directive 2004/107 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air. As provided in the Commission's [inception impact assessment](#) from December 2020, the initiative aims to improve overall EU legislation for clean air, taking into account the latest scientific evidence for the protection of human health and the environment and the fitness check of this legislation carried out in 2019. The review seeks to align the EU air quality standards more closely with the recommendations of the World Health Organization, and to improve legal certainty and the enforceability of the legislative framework (including penalties and access to remedies). Policy options will also explore the strengthening of air quality monitoring, modelling and plans.

The public consultation is open until 16 December 2021 and the Commission plans to adopt the legislative proposal in Q3 2022.

EU adopts revised rules on access to justice in environmental matters.

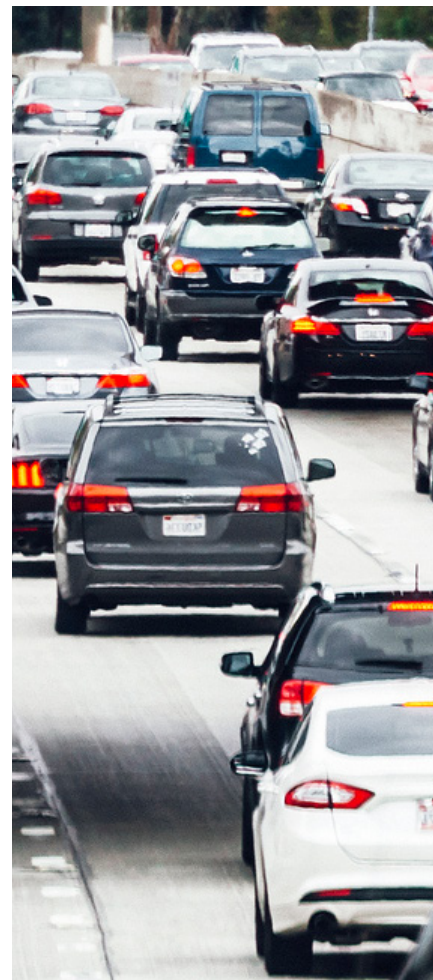
After being adopted by the [European Parliament](#) and the [Council](#) at first reading, [Regulation 2021/1767](#), amending the **Aarhus Regulation 1367/2006** on access to information, public participation in decision-making and access to justice in environmental matters, was published in the Official Journal and entered into force. The Commission proposed the revision of the regulation in 2020 (please see [frESH Law Horizons October 2020](#)). The amended regulation includes the changes that the co-legislators [provisionally agreed](#) on earlier this year (please see [Sustainability Outlook July 2021](#)). They **broaden the privileged legal standing** beyond NGOs to other members of the public (over certain thresholds); introduce an obligation on EU institutions and bodies to publish requests for internal review and decisions; and extend the requests for internal review to **administrative acts that require implementing measures** at the national level or at the EU level, but not to state aid decisions.

European Commission starts the revision of rules on cosmetics.

The Commission has issued an [inception impact assessment](#) (roadmap) for the revision of the **Cosmetic Product Regulation** 1223/2009. The policy options considered include the **extension of the generic approach to risk management** to ensure that cosmetics do not contain chemicals that cause cancers or gene mutations, affect the reproductive or the endocrine system, or are persistent and bio-accumulative. It also contemplates **reattributing tasks regarding cosmetic ingredients from the Scientific Committee on Consumer Safety (SCCS) to the ECHA**. Other options considered include reviewing the **definition of nanomaterial** and changing the way in which **specific product label information** is provided.

Regarding economic impacts, the Commission expects some cost reductions for industry, for instance on nanomaterials and through improvements in the risk assessment and management of harmful substances, whereas other changes might lead to increased costs for industry, including SMEs, throughout the supply chain. However, the targeted revision aims to provide the EU industry with a global competitive advantage in terms of economic sustainability and legal clarity, also because the new rules would also affect **imports** from non-EU countries. Furthermore, the revision would minimise and substitute, as far as possible, chemicals that have a chronic effect on the environment, as well as phasing out the most harmful chemicals for non-essential societal uses.

The Commission plans a public consultation in Q4 2021 and to adopt a legislative proposal in Q4 2022.





European Commission starts the revision of rules on detergents.

The Commission has [issued](#) an inception impact assessment on the revision of the **Detergents Regulation 648/2004**.

The revision builds on recent EU evaluations of the Detergents Regulation and the rules on labels for chemical products, as well as the comprehensive “fitness check” of chemicals legislation other than REACH. It aims to reduce administrative burdens, ensure more consistency with other relevant legislation and adapt the legislation to technical progress. A key issue was that the concepts and definitions in the Detergents Regulation are not always coherent with the meaning they have gained over time in practice. To address this, policy options would include **clarifications** of the **scope and definitions** of the regulation and **potential additional requirements** for detergents (e.g. the expansion of phosphorus limitations or requirements for certain harmful substances that are currently not covered). Another option is its **repeal and the incorporation** of its provisions **in other pieces of EU chemicals legislation**.

The Commission plans a public consultation for Q3 2021 and to adopt a legislative proposal in Q4 2022.

Outgoing Executive Director of the ECHA shares his views on chemicals regulation.

During the likely last [exchange](#) of ECHA's Executive Director Bjorn Hansen, who will retire by April 2022, along with members of the ENVI Committee, Hansen mentioned the [European Green Deal](#) and the [Chemical Strategy for Sustainability](#) as two important milestones for chemicals. He noted how ECHA significantly **increased the number of compliance checks** of registration dossiers, with ECHA exceeding its target and doubling the amount of expected checks. On **restrictions**, ECHA has delivered opinions on dossiers that are **broader and covering more substances than ever before**, such as **microplastics and tattoo inks**, and is currently working on **PFAS** in collaboration with Member States. On **authorisations**, one of the major accomplishments is the clarification of the roles of ECHA, the Commission and the Parliament. In addition, Hansen highlighted the **limited resources in EU countries** to meet their legal obligations. Other shortcomings include **substance evaluations**, which were not meeting their objectives, as opposed to compliance checks. Compliance of industry with **information requirements** is an issue, not only in terms of ECHA evaluation, but also overall. Hansen also noted that the desired level of efficient interaction between REACH, CLP and other legislation has not been achieved.

European Commission prepares the second High Level Roundtable on the Chemicals Strategy for Sustainability.

The second meeting of the High Level Roundtable will take place on 25 November. The [agenda](#) foresees a focus on the state of the **implementation of the Chemicals Strategy for Sustainability**, as well as **enforcement**. According to a [background document](#), strengthening enforcement and increasing compliance are priorities for ensuring the highest protection of health and the environment from hazardous chemicals and providing a **level playing field** both within the EU and **between the EU and non-EU players**. Considering that EU standards are not always necessarily mirrored globally, it is also important that enforcement becomes more effective in order to tackle the higher risk of non-compliance of articles containing **chemicals imported** from outside the EU. To ensure the highest protection of EU citizens and the environment, it is vital that EU chemicals legislation be applied by all economic operators in all Member States, and with the same level of scrutiny and effectiveness. Thus, the Commission aims for zero tolerance regarding non-compliance by being more effective at the **borders** and on **e-commerce**, by **reinforcing support to Member States** and strengthening the **role of the ECHA Forum** on enforcement. Other measures would include **prioritising areas for enforcement**, strengthening the use of IT enforcement platforms and other digital tools, and allowing civil society and businesses to contribute to enforcement.

European countries call for consumer protection and circularity of textiles.

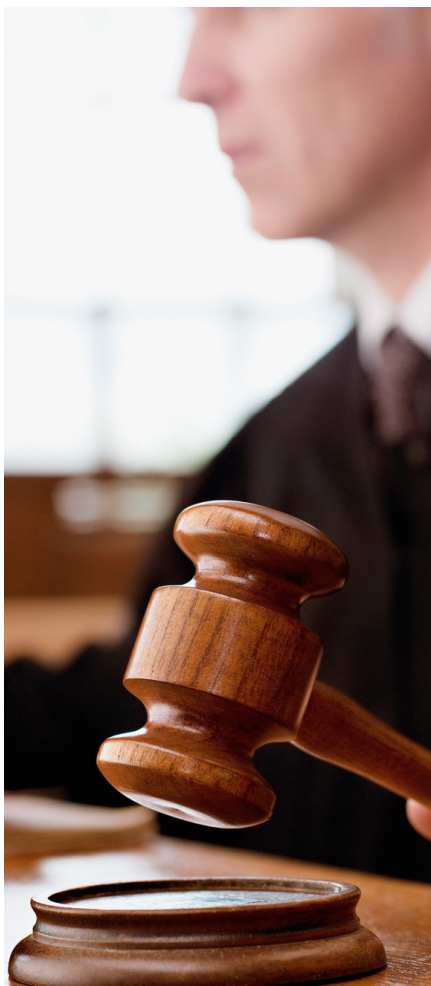
Following a Roundtable on Textiles that took place in June, Austria, Belgium, Denmark, Germany, Finland, France, Luxembourg, the Netherlands, Norway, Spain and Sweden wrote a [joint letter to the Commission](#), asking it to give priority to regulatory actions to phase out harmful substances in textiles, with **PFAS, polybrominated flame retardants** and other persistent organic pollutants (**POPs**) requiring special attention. Furthermore, they highlighted the importance of minimising emissions of **microplastics** and reducing the use of **unrecyclable textiles**. The abovementioned substances formed an obstacle to recycling. The countries called for a **waste hierarchy** to serve as a basis in developing the **EU Strategy for Sustainable Textiles** and asked for measures to prolong the lifespan of textiles, as well as clear **EU targets on collection, reuse and textile-to-textile recycling**. They also called for a **mandatory label to inform consumers**, in a direct, simple and comprehensive manner, **about environmental and social impacts**.

European Parliament votes against the extension of pesticides approvals.

The Parliament has adopted a [resolution](#) against the Commission's extension of the approval periods of certain active substances, in particular **chlorotoluron** (a weed killer) and **difenoconazole** (an antifungal), with 407 votes in favour and 256 against. The Parliament called on the Commission to repeal Commission Implementing Regulation 2021/1449 on the **extension of the approval periods** of the active substances and to submit a new draft, which takes into account scientific evidence on the harmful properties of the substances concerned, especially chlorotoluron and difenoconazole. It requested that the Commission withdraw the approvals for substances if proof or reasonable doubt exists that they will not meet the safety criteria laid down in Plant Protection Products Regulation 1107/2009. Member States should ensure the proper and timely reassessment of the approvals for the active substances for which they are the reporting Member States, and make sure that the current delays are resolved effectively and as soon as possible.

The strongly worded resolution is not binding on the Commission. The Commission adopted the Implementing Regulation in the applicable so-called comitology procedure, which provides for minimal scrutiny by the Parliament. The Implementing Regulation entered into force in early September.





EU agencies launch parallel consultations on the initial scientific evaluations of glyphosate.

The [ECHA](#) and the European Food Safety Authority ([EFSA](#)) have initiated parallel consultations on the initial scientific evaluations of glyphosate ([please see Sustainability Outlook June 2021](#)).

The initial scientific evaluations were prepared by the **Assessment Group on Glyphosate (AGG)**, comprising the competent authorities of France, Hungary, the Netherlands and Sweden. The **hazard classes open for comments** in relation to **harmonised classification and labelling (CLH)** under CLP Regulation 1272/2008 are **physical hazards, health hazards** (except respiratory sensitisation and aspiration hazard) and **environmental hazards**. EFSA consults on the **assessment report for glyphosate as active substance for plant protection products**.

After the consultations, each agency will consider the comments relevant to their respective process. For the CLH process, the AGG and ECHA's Committee for Risk Assessment (RAC) will evaluate the input, and RAC will develop its opinion on the classification of glyphosate. The consultations will run until 22 November.

ECHA provides a guideline on the reduction of animal testing.

ECHA's [guideline](#) advises registrants on how to reliably combine **different sources of alternative data when assessing skin sensitisation**. This reduces the need to test on animals, while protecting people from allergies, ECHA [said](#). The technical guideline contains defined approaches for assessing whether a substance is a skin sensitiser, and categorising whether the sensitisation is strong or moderate. Certain steps need to take place before any testing (in vitro or in vivo) is conducted, including using existing in vitro, in vivo, historical human data, data from valid so-called (Q)SARs and data from structurally related substances (read-across approach). It refers to defined OECD approaches on skin sensitisation, which provide specific data interpretation procedures on how to combine data obtained from different in chemico, in vitro and in silico methods, in order to conclude whether a substance is a skin sensitiser and, if so, the skin sensitisation potency.

EU court dismisses an appeal against phthalates authorisation.

The European Court of Justice (ECJ) has [dismissed](#) an appeal by the NGO ClientEarth against the 2019 General Court's [decision](#) (case T-108/17) not to annul an authorisation of certain uses of the phthalate bis(2-ethylhexyl) **DEHP in recycled PVC** (case C-458/19). ClientEarth had asked for an internal review of the authorisation [granted](#) in 2016 by the Commission under Regulation 1907/2006 (**REACH**).

DEHP has been used as a **plasticiser to soften PVC** for the manufacture of plasticised or flexible PVC articles for decades. It is present as a largely **unwanted impurity in PVC waste** collected, sorted, processed and then placed on the market in the form of recycle. Nevertheless, the limited presence of DEHP (or other plasticisers) in the recycle could theoretically be of some benefit to downstream users (the PVC converters).

One of the grounds of appeal raised by ClientEarth was that the General Court had **incorrectly ruled on the properties to be considered during the risk assessment of a substance**. However, the ECJ rules that the General Court has correctly held that any details on the intrinsic properties of a substance that are not included in Annex XIV of REACH should not be taken into account during the risk assessment. This was because the mere inclusion of a substance in the **Candidate List** due to certain intrinsic properties does not necessarily or automatically lead to the inclusion of those properties in Annex XIV. The ECJ also found that the General Court had been correct in deeming that the Commission had lawfully granted the authorisation for **uses of DEHP as contained in a mixture**.

EU court decides against suspending rules on the marking of single-use plastic (SUP) beverage cups.

The General Court has [dismissed](#) an application for an **interim suspension** of Implementing Regulation 2020/2151 and Article 7 of the [Single-use Plastics Directive](#) 2019/904, which provide for the **marking** of certain **SUP** products, such as **beverage cups**. According to the General Court, the applicant failed to establish urgency or demonstrate serious and irreparable harm. It rejected arguments relating to the **protection of the environment** and of **consumers**, as an applicant may not, in order to establish urgency, invoke infringement of the rights of third parties or of the general interest.

The **main proceedings** started by the applicant and six other companies to annul the above-mentioned regulation are still **pending** (case [T-148/21](#); please see [frESH Law Horizons April 2021](#)).

EU Blockchain Observatory and Forum publishes a report on energy use of cryptocurrencies.

The EUBOF has published a [report](#) on the **energy efficiency of blockchain technologies**, as requested by the Commission (please see [Sustainability Outlook August 2021](#)). EUBOF is a research hub created as a pilot project of the European Parliament and backed by the Commission. The report presents the various approaches and methodologies that address the challenge of **estimating the energy consumption and performance** of blockchain technologies, and deals with the topic of energy efficiency of the **ICT infrastructure used for cryptocurrency mining**. It **recommends** that the [European Blockchain Services Infrastructure](#) (EBSI), a joint initiative of the Commission and the [European Blockchain Partnership](#) to form a network of distributed nodes across Europe that will deliver cross-border public services, considers energy consumption (and efficiency) when deciding on the underlying technology for developing the necessary digital infrastructure. In addition, energy efficiency should always be treated along with the **scalability and performance requirements** of the blockchain-based solution under evaluation. It is important to make sure that **renewable energy** is used to the maximum possible. **Equipment** used as infrastructure should be **certified** and Member States should agree on a **blockchain energy consumption index**.

France proposes to reinforce environmental regulation of digital technologies.

The French Senate has [published](#) a draft law aimed at reinforcing the **environmental regulation of digital technologies** by the Authority for the Regulation of Electronic Communications, Posts and Press Distribution. The draft modifies several articles of the Posts and Electronic Communications Code by adding definitions such as **operating systems**, providers of operating systems, **data centres** and operators of data centres. It widens the powers of the ministry in charge of the authority, which can **collect information** and documents on the **environmental footprint** from persons providing **online public communication services** or their **providers**, operators of data centres, terminal equipment manufacturers, network equipment manufacturers and operating system providers. The draft provides a **sanctions** regime in the event that the economic operators do not comply with the above-mentioned obligations. The authority must also **review** the environmental footprint of the electronic communications sector, terminals and data centres in its report of activities.





Dutch government consults on the draft regulation on SUPs.

The Dutch government is [preparing](#) a ministerial regulation to implement the [Single-use Plastics Directive](#) 2019/904. This regulation will detail some of the measures provided in a [decree](#) adopted in June. The draft regulation includes provisions on **consumption reduction** measures for SUP beverage plastic cups and food containers, extended producer responsibility (**EPR**) product categories identified in the SUPD, and monitoring and reporting obligations. To achieve the consumption reduction, the Draft Regulation **prohibits** the use of SUP beverage cups and food containers for **onsite consumption**, unless the operators collect the SUP products separately for “**high-quality recycling**”, defined as value-retaining recovery *for the original purpose*. This must exceed certain percentages by weight (**beverage cups**: 75% in 2023, 80% in 2024, 85% in 2025, and 90% from 2026; **food containers**: 75% in 2024, 80% in 2025, 85% in 2026, and 90% from 2027). The operators must demonstrate that they have presented the collected packaging (free from any contaminants or food residues) to a processor for that purpose. For the **takeaway consumption of these products**, the draft regulation provides the obligation to **offer a reusable alternative** (or accept the clients’ alternative if compliant with food safety rules) and a **ban** on the **free provision** of these SUP products.

The [consultation](#) is open until 6 December.

France plans to regulate consumer information on environmental characteristics.

The French government has [published](#) and [notified](#) to the European Commission a draft decree on **consumer information** with regard to the environmental characteristics of waste-generating products, as mandated in the Law on Fight against waste and circular economy (*Loi AGECE*). The different environmental qualities and characteristics defined by the draft decree include – depending on the categories of products concerned – the incorporation of **recycled material**, the use of **renewable resources, sustainability, compostability, reparability**, possibilities for **reuse, recyclability**, the presence of **hazardous substances, precious metals or rare earth metals, traceability** and the presence of **plastic microfibres**. With regard to **recyclability**, the decree defines it as “the **effective recycling capacity** of waste from identical or similar products”, and provides several criteria. Producer responsibility organisations (PROs) would be responsible for determining the recyclability, or the producers themselves if they have duly set up an individual EPR scheme. The provision on the recyclability characteristic applies to a broad group of products, ranging from packaging and paper to construction products, batteries, textiles and toys, among others.

Operators placing the products on the market must provide information on the **environmental qualities** and information on the **premiums and penalties** paid in their EPR schemes. The information must be made available **electronically**, and, where appropriate, in accordance with procedures laid down by order, **displayed on labelling** or any other legible and comprehensible device.

The draft decree is open for [public consultation](#) until 9 November. The EU standstill period, during which France may not adopt it, currently ends on 5 January 2022.

Italian government wants to postpone the plastic tax.

As part of the [2022 National Budget Programme](#), the Italian government [announced](#) its intention to **postpone** the application of the national **SUP** packaging tax adopted in 2019 **for the fourth time, to at least 2023**. It has [reportedly](#) been under significant pressure from industry, which wants to abolish the tax altogether.

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