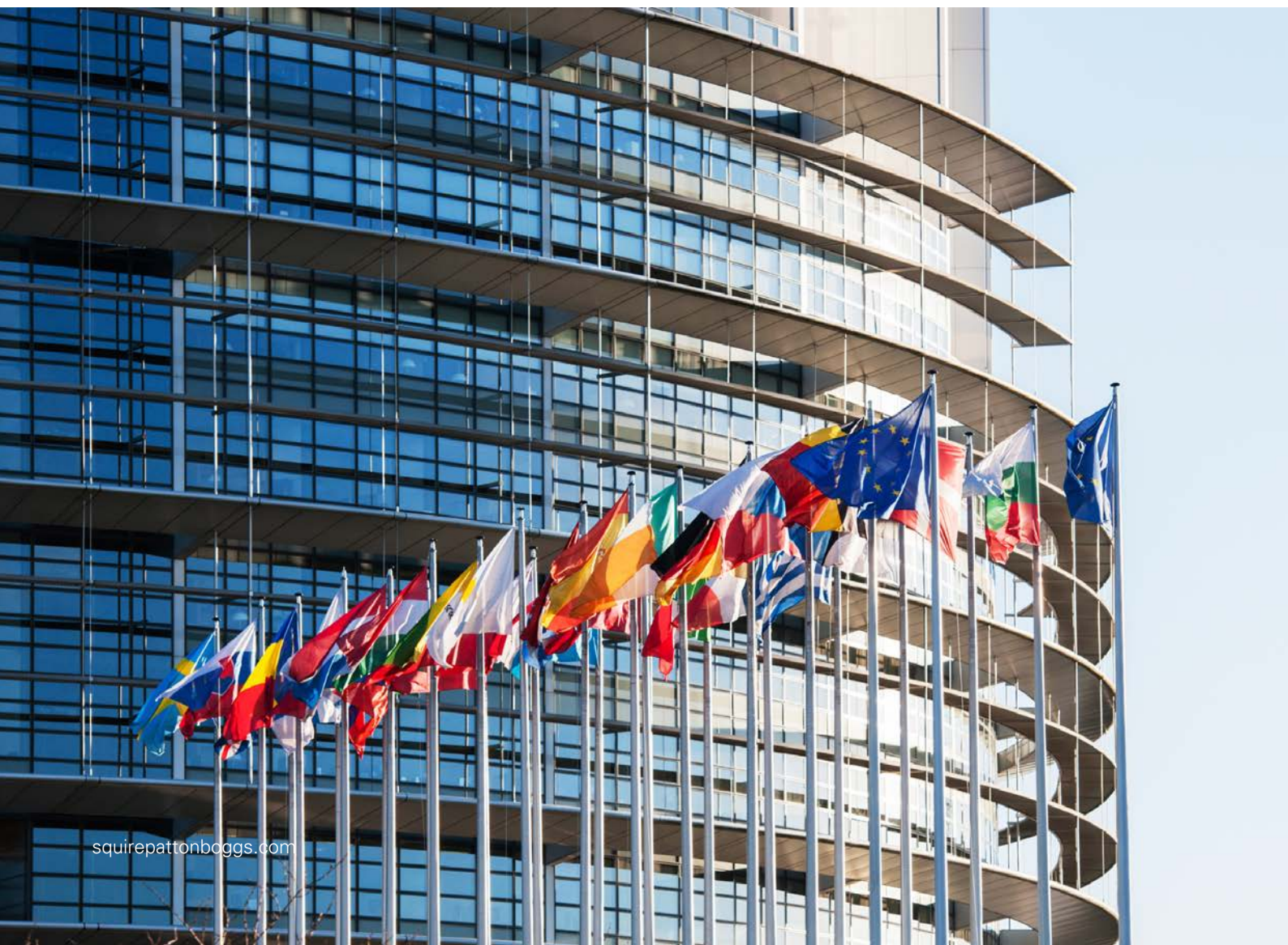


# Sustainability Outlook European Union

February 2022



## European Commission presents controversial rules on the sustainability of nuclear and gas.

The Commission [presented](#) a [Taxonomy Complementary Delegated Act](#) (CDA) on climate change mitigation and adaptation covering certain gas and nuclear activities.

Taxonomy Regulation 2020/852 provides that **to establish the degree to which an investment in an economic activity is environmentally sustainable**, that economic activity must (1) contribute substantially to one or more of six environmental objectives: (i) climate change mitigation, (ii) climate change adaptation, (iii) sustainable use and protection of water and marine resources, (iv) transition to a circular economy, (v) pollution prevention and control, and (vi) protection and restoration of biodiversity and ecosystems; (2) not significantly harm any of these objectives (DNSH); (3) be carried out in compliance with minimum social safeguards; and (4) comply with technical screening criteria (TSC).

The CDA sets conditions for considering certain nuclear and gas activities as **transitional activities** in the Taxonomy. Transitional activities are those that cannot yet be replaced by technologically and economically feasible low-carbon alternatives, but do contribute to climate change mitigation and have the potential to play a major role in the transition to a climate-neutral economy. The CDA includes three **natural gas activities**, which are subject to verification of life cycle emissions by a third party. The following TSC apply to them:

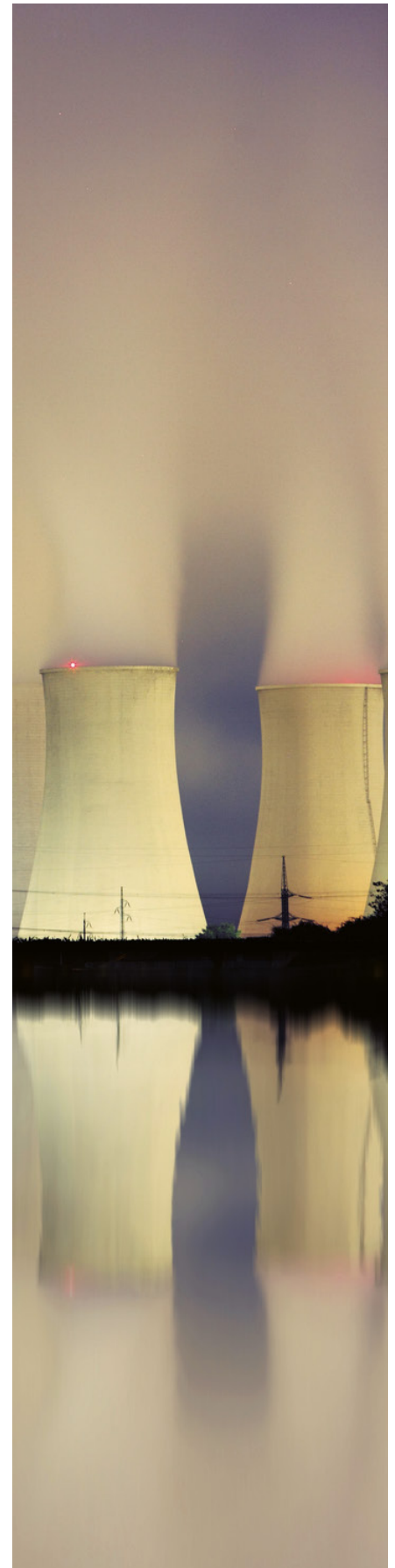
- The life cycle greenhouse gas (GHG) emissions from electricity generation must not exceed **100g CO<sub>2</sub>e/kWh**.
- As a derogation (for gas power plants that receive their construction permit by 31 December 2030), direct GHG emissions are lower than **270g CO<sub>2</sub>e/kWh** of the output energy, or annual direct emissions do not exceed an average of 550kg CO<sub>2</sub>e/kW of the facility's capacity over 20 years. In this case, **additional cumulative requirements** apply, including that the plant replaces facilities using solid or liquid fossil fuels; the activity ensures a full switch to renewable or low-carbon alternatives by 2035; the power to be replaced cannot be generated from renewable energy; and it contributes to the phase out of coal.

The CDA considers **nuclear power low-carbon**. The three **nuclear activities** that it addresses must fulfil environmental conditions (including regarding **waste disposal**), which go beyond the requirements in existing EU and national laws.

The CDA amends the delegated act on disclosures so that large listed non-financial and financial companies must **disclose the proportion of their activities linked to natural gas and nuclear energy**.

The Commission had already shared the draft CDA with the Member States Expert Group on Sustainable Finance and the Platform on Sustainable Finance earlier this year (see [Sustainability Outlook January 2022](#)). The Platform on Sustainable Finance responded negatively to the draft, and there were differing opinions among Member States. According to the procedure, the Council and European Parliament have **four months to object** (which they can extend to six months). If neither institution objects with the requisite majority, the CDA will enter into force. The CDA is expected to apply as of 1 **January 2023**. As provided in the Taxonomy Regulation, a **review** of the TSCs is expected **every three years**.

Environmental NGO ClientEarth has already [said](#) that it will consider legal action if fossil gas-based activities are included in the EU Taxonomy as transitional activities.







### NGOs challenge Taxonomy criteria for biomass, bio-based plastics and chemicals.

Environmental NGO ClientEarth [announced](#) that it has filed a [request for internal review](#) of the Climate Delegated Act on taxonomy TSC with the European Commission, challenging the TSC for biomass, bio-based plastics and chemicals used to make plastics. As provided in the Aarhus Regulation 1376/2006, an NGO or other members of the public (under certain conditions) are entitled to make a request for internal review to the EU institution or body that adopted an administrative act that contravenes environmental law.

The Climate Delegated Act, adopted in June 2021 and applicable since January 2022 (see [Sustainability Outlook January 2022](#)), provides TSC for bioenergy, bio-based plastics and chemicals used to make plastics to be considered as activities that “contribute substantially to climate change mitigation or adaptation” and do no significant harm to the environment.

According to ClientEarth, the Commission has infringed the Taxonomy Regulation 2020/852 by relying on “flawed standards for **biomass** already provided under the Renewable Energy Directive [2009/28], instead of assessing whether the available scientific evidence on biomass production is conclusive.” ClientEarth is also challenging the criteria for **bio-based plastics** and **organic basic chemicals (OBC) used to make plastics**, such as ethylene and propylene. ClientEarth contends that the Commission failed to assess the **environmental impacts of the life cycle of the manufacture of plastics** in primary form derived from renewable feedstock. The manufacture of OBC is an activity that locks in carbon-intensive assets, hampers the development and deployment of low-carbon alternatives and does not support the transition to a climate-neutral economy.

The NGO adds that the Commission **has not addressed properly the “Do No Significant Harm” criteria** in relation to the **circular economy** and to the **sustainable use and protection of water and marine resources**, considering that a main use of plastics is single-use packaging.

A coalition of seven NGOs, supported by another 50 in an [open letter](#), also filed a [request for internal review](#) to the same act as regards the labelling of certain bioenergy and forestry activities.

The Commission has **16 weeks** to reply from the date on which it received each request. If it does not remedy the issues presented in the requests, the NGOs may challenge that decision before the Court of Justice of the European Union.

### Five Member States propose options for the revision of EU packaging rules.

Austria, Denmark, Luxembourg, the Netherlands and Sweden sent a [joint letter](#) with [policy options](#) on the [revision of the Packaging and Packaging Waste Directive](#) (PPWD) to the European Commission. They agree that the upcoming revision “should follow the waste hierarchy and therefore focus on prevention, re-use, recycling, and the use of recycled content.” Regarding **prevention**, they call for clear and ambitious reduction targets whilst preventing “light-weight” packaging, and **packaging design criteria** to apply regardless of the materials, as well as mandatory **re-use targets** for specific product groups. Furthermore, ambitious and legally binding **design criteria**, adopted through implementing acts or “direct regulations”, should ensure **recyclability** within existing schemes, and not only in theoretic or future ones, and steer packaging towards high-quality recycling into a “similar product.” However, plastics policies should not lead to the use of more packaging composed of different types of materials. Mandatory minimum post-consumer **recycled content** requirements in certain plastic packaging should be accompanied by determination methods, including **mass balance**. In addition, the Member States want the Commission to (at least) study the need to **expand separate collection** (taking into account Member States’ existing waste infrastructure), and to foster **eco-modulation** of extended producer responsibility (EPR) **fees**. They urge the Commission to establish better rules and controls regarding **imported packaging**.

After postponing this multiple times, the Commission is [tentatively planning](#) to adopt its proposal on 21 July 2022.

### **Circular Plastics Alliance takes intermediate steps towards using 10 Mt of recyclates.**

On occasion of the [General Assembly](#) of the [Circular Plastics Alliance](#) (CPA) on 25 February 2022, the European Commission [announced](#) that it has published a CPA [report](#) on requirements and solutions for increasing the integration of recycled plastics into products. The report focuses on **common requirements** that occur across the major plastic-using sectors (packaging, building and construction, electrical and electronic equipment, automotive and agriculture), and **solutions** to increase uptake of recycled plastic. It states that due to its mandate, the CPA is not permitted to propose EU-level policy solutions, but it calls for **closer cooperation** between public and private actors in the plastics value chain. It also highlights the **need for new European standards on recycled plastics** (please see below). The CPA had also approved two **data collection tools** to monitor the production and use of recycled plastics in Europe. The Commission launched the CPA in 2018 to boost the recycled plastics market to 10 Mt by 2025. The CPA represents the full plastics value chain and includes 300 signatories from industry, academia and public authorities.

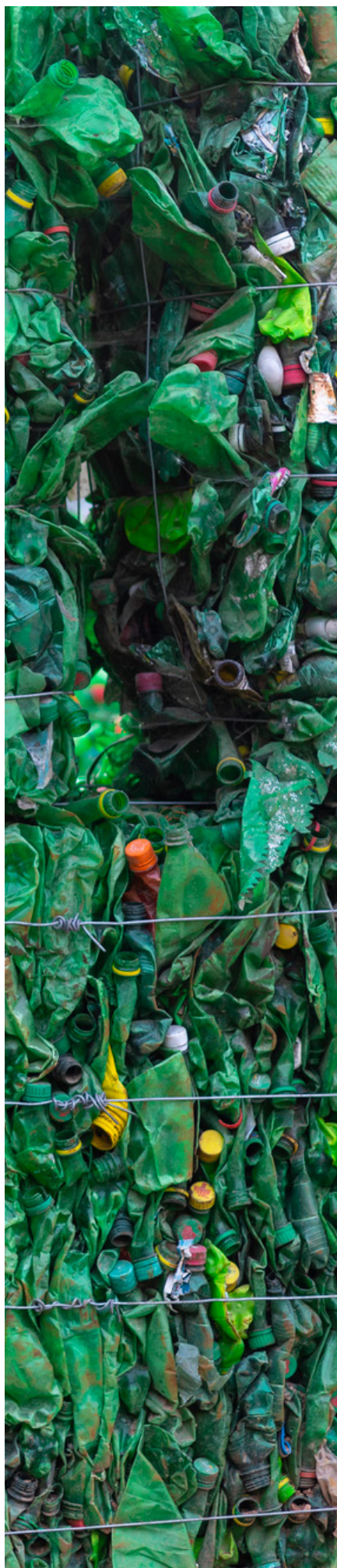
### **European Commission presents a strategy on standardisation.**

The Commission [presented](#) a [New Standardisation Strategy](#), accompanied by a [proposal](#) for an amendment on the Standardisation Regulation 1025/2012, a [report](#) on its implementation and the [2022 annual Union work programme for European standardisation](#). The strategy aims to strengthen the EU's global competitiveness, and focuses on the **green and digital transitions**. According to the Commission, European standards are necessary to deliver the EU's ambitions towards a **climate-neutral, resilient and circular economy**, as well as to be a global setter and provide EU companies with an important first-mover advantage. The Commission has identified eight **standardisation urgencies** in strategic areas, including the recycling of critical raw materials, the clean hydrogen value chain and low-carbon cement. The annex to the annual work programme provides a list of **61 actions for the development and revision of European standards**. Some of them are in the fields of **sorted plastic waste and recycled plastics** (please see also below), materials in contact with drinking water, fertilising products, food safety contaminants in food, **ecodesign and energy labelling**, and toy safety.

The Commission will establish the function of a **Chief Standardisation Officer** to ensure high-level guidance across the Commission on standardisation activities. Among other key actions, the Commission aims at (1) **improving the governance and integrity of the European standardisation system**; (2) **enhancing European leadership in global standards** (by setting up a new mechanism with EU Member States and national standardisation bodies to share information, and coordinate and strengthen the European approach to international standardisation); (3) **supporting innovation** under Horizon 2020 and Horizon Europe; and (4) **promoting academic awareness** on standards.







### European Commission to request standards for plastic recycling and recycled plastics.

A [draft standardisation request](#) by the Commission to the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (CENELEC) addresses **plastics recycling** and **recycled plastics** in support of the implementation of the [European Plastics Strategy](#).

The draft implementing decision recalls the declaration of the CPA and its commitments to recycle 10 Mt of plastic by 2025 and to “actively support the development or revision of European standards and guidelines on the quality of plastics recycling and recycled plastics.” The requested standardisation work should focus on the **recyclability and design-for-recycling of plastic products**; the characterisation and classification of the quality of **sorted plastics waste**; and the characterisation and classification of the quality of **recycled plastic materials**. The request provides a list of 10 **new European standards** and European standardisation deliverables to be drafted (e.g. design-for-recycling guidelines for polyolefin plastics packaging, PET beverage bottles and trays, PS dairy packaging and EPS packaging), as well as a list of 11 **existing standards to be revised**. Terms such as “**recyclable**” plastic product and “**design-for-recycling**” of a plastic product should also be defined.

**NGOs** (ECOS, the Rethink Plastic alliance and ZWE) had **opposed** the current standardisation procedure and sent a letter to the Commission to draw its attention to what they call the questionable and opaque role of the CPA in the preparation phase of the draft standardisation. According to the NGOs, the CPA has been prioritised in its role as “other relevant stakeholder”, whereas the European Standardisation Organisations (ESOs) and the “Annex III organisations” have been consulted at a later stage (e.g. for assessing the standardisation needs). As a result, “the environmental ambition of the draft is exceptionally low.” NGOs have requested the Commission to re-initiate the process from the beginning.

If they accept the standardisation request, CEN and CENELEC would have **36 months** from their notification to adopt the standards.

### European Commission consults on “unintentional” microplastics releases.

Following its call for evidence on reducing the amount of unintentionally released microplastics in the environment and stakeholder consultation (please see [Sustainability Outlook September 2021](#) and [Sustainability Outlook December 2021](#)), the Commission launched a public consultation in the form of an online survey.

The consultation focuses on **plastic pellets**, **synthetic textiles** and **tyres** as the sources known to release the largest quantity of microplastics (which were the initial scope of the initiative), but also **paints**, **geotextiles** and **detergent capsules**, which were identified as additional sources during the stakeholder consultation. Stakeholders were invited to register their interest in a study aimed at identifying policy options last year.

Regarding pellet loss prevention, the Commission’s questions include setting up a comprehensive **system for pellet handling companies** and **EPR**. For textiles, measures under consultation include **restrictions on all synthetic fibres** for certain applications or those with high releases of microplastics, **emission limits for textiles** placed on the EU market, the placing of a **filter in washing machines** and **EPR**. For tyres, the Commission asks about **tyre design** (in order to reduce abrasion), legal **limits on tyre abrasion**, **labelling** of tyres in terms of abrasion and **higher fees in EPR** for low-performing tyres. The Commission also asks about regulating the share of **plastic content** or increasing the share of **biodegradable plastic** in **paint**. Among the measures to reduce microplastics pollution in general, the survey asks about a common system to monitor and report microplastics releases along the life cycle, urban wastewater treatment and in recycling plants, and international agreements.

The consultation is open until 17 May 2022. The Commission plans to propose a regulation in Q4 2022.

### European Commission proposes rules on supply chain due diligence.

The Commission adopted a [proposal](#) for a directive on corporate sustainability due diligence, and presented a [communication on decent work worldwide](#). As [stated](#) by the Commission, the proposal aims at fostering sustainable and responsible corporate behaviour throughout the global value chain. Companies would be required to **identify** and, where necessary, **prevent, end or mitigate the adverse impacts** of their activities on **human rights** and on the **environment**.

The new rules on due diligence intend to improve, at a larger scale, the **national rules** introduced by some Member States (e.g. Germany) and the voluntary action taken by companies. The proposal is based on the EU competences regarding the freedom of establishment and internal market (Articles 50 and 114 of the Treaty on the Functioning of the EU).

The proposed rules apply to **EU limited liability companies** above **certain thresholds** (with more than 500 employees and €150 million in net turnover worldwide, or with more than 250 employees and a €40 million net turnover worldwide when at least 50% of the turnover is generated in **high-impact sectors**). For **non-EU companies**, the same turnover threshold applies if the turnover is generated in the EU. High-impact sectors include textiles, agriculture, forestry, fisheries and food, and mineral resources. Small and medium enterprises (SMEs) are out of scope of the proposal but may be indirectly affected by accompanying measures.

The proposal applies to the companies' own operations, their subsidiaries and their value chains. It provides a **list of actions** to conduct the due diligence regarding all adverse **human rights** and **environmental impacts**. Companies would have to:

- Integrate due diligence into policies
- Identify actual or potential adverse human rights and environmental impacts
- Prevent or mitigate potential impacts
- Bring to an end or minimise actual impacts
- Establish and maintain a complaints procedure
- Monitor the effectiveness of the due diligence policy and measures
- Publicly communicate on due diligence

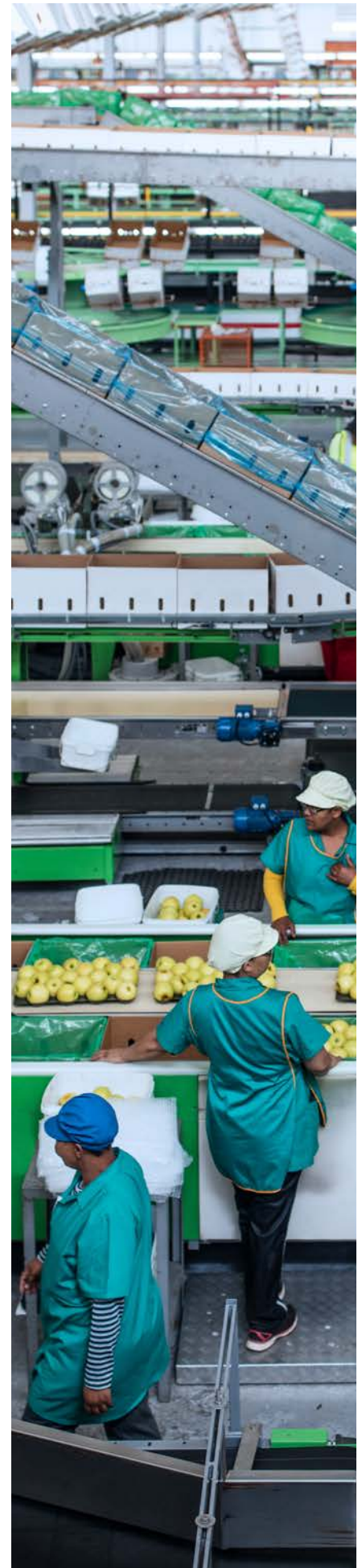
The proposal references a number of **multilateral environmental agreements**, such as the UN Convention on Biological Diversity and on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

Companies in scope would need to take appropriate measures (“**obligations of means**”) in light of the severity and likelihood of different impacts, the measures available to the company in the specific circumstances, and the need to set priorities. Companies with a turnover of more than €150 million would also need to have a **plan** to ensure that their business strategy is **compatible with the Paris Agreement** (and its objective to limit global warming to 1.5 degrees).

The proposal empowers the Commission to adopt **guidance on model contract clauses**, as well as on how companies should fulfil their due diligence obligations, including for specific sectors or specific adverse impacts.

Victims would be able to take **legal action for damages** that could have been avoided with appropriate due diligence measures. **Directors** would have the **duty** to set up and oversee the implementation of due diligence and to integrate it into the corporate strategy.

The proposal foresees a standard general **transposition period of two years**. The rules on companies with a net turnover of more than €40 million from high-impact sectors would start to apply **four years** from the entry into force of the directive. Pursuant to the ordinary legislative procedure, the Council and European Parliament will now amend, negotiate and adopt the proposal.







### European Commission starts an initiative on the certification of carbon removals.

The Commission [launched](#) a call for evidence for an impact assessment on the certification of carbon removals, as well as a [public consultation](#) in the form of an online questionnaire. The Commission foresaw this initiative in its **communication on sustainable carbon cycles** (please see [Sustainability Outlook December 2021](#)).

The Commission plans to support achieving its climate objectives by removing, recycling and sustainably storing carbon. Specifically, its aim is to expand sustainable carbon removals and encourage the use of innovative solutions to capture, recycle and store CO<sub>2</sub> by farmers, foresters and industries. It wants to develop a **regulation on certifying carbon removals**, including on **monitoring, reporting and verifying** the authenticity of the removals.

The call for evidence does not provide much detail on policy options. The certification framework should identify the **types of carbon removals** to consider and **set robust requirements**, as well as ensure environmental integrity, in particular with regard to the EU's ambition to reverse biodiversity loss and pollution. The baseline scenario is that the actors on the voluntary carbon markets continue to set their own standards. The initiative will assess whether an **EU certification framework** should set **common minimum standards for the certification methodologies** or **provide comprehensive rules on the certification of each type of carbon removal**. The Commission will also look at which party should carry out the prior validation of projects and the subsequent verification of carbon removals (such as private operators or public authorities, possibly as part of a centralised EU system).

The **public consultation's** questionnaire asks stakeholders about (1) the **potential scope** of the certification framework; (2) the **benefits** of a certification framework to scale up high-quality carbon removals over the coming years; (3) the **role of the EU** in the certification of carbon removals; and (4) **certification methodologies**.

In parallel, the Council made available [draft conclusions](#) reacting to the Commission's communication. The Council welcomes the communication but emphasises that CO<sub>2</sub> represents a smaller share of GHG emissions of the agricultural sector (compared to nitrous oxide and methane). It recommends **joint management of nitrogen and carbon** and a broader scope of the initiative, including **all GHG emissions from the agricultural sector**. The Council also highlights the diversity of each Member State when assessing climate-friendly practices and their environmental integrity, and suggests that the future EU certification framework needs to provide the necessary **flexibilities** to take this and, if possible, **compatible existing national initiatives** into account.

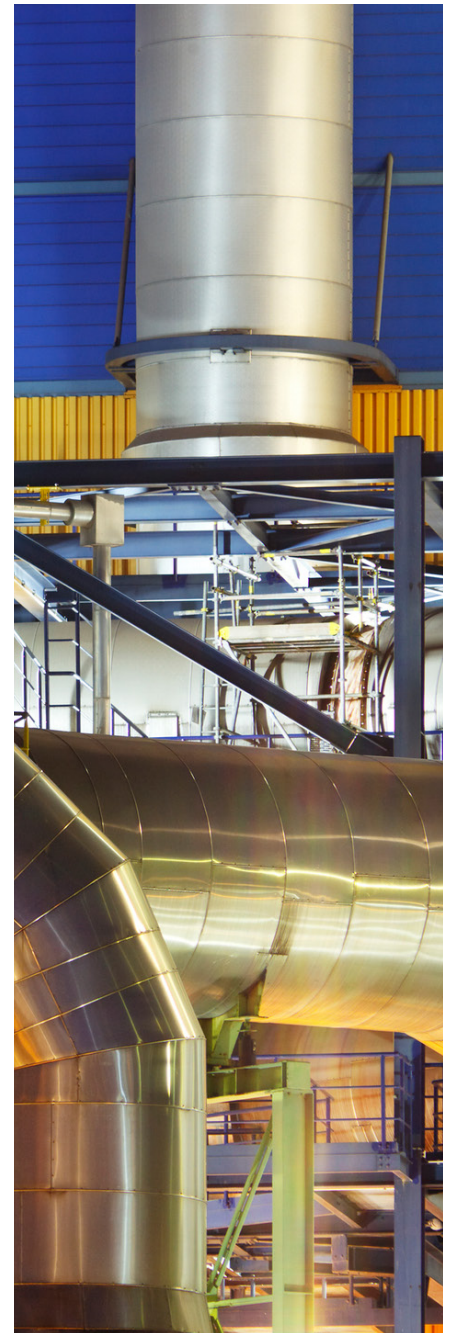
The [feedback period](#) and the [public consultation](#) is open until 2 May 2022. The Commission expects to adopt the regulation in Q4 2022.

## European Parliament Rapporteur proposes to include waste incinerators in ETS.

In his [draft report](#) on a revised **EU Emissions Trading System** (ETS), MEP Peter Liese (EPP, Germany), the Rapporteur of the Committee for Environment, Public Health and Food Safety (ENVI), supports the **overall net 55% target** for 2030 put forward by the European Commission (please see [Sustainability Outlook July 2021](#) and [Sustainability Outlook January 2022](#)). He proposes additional measures to support innovation and carbon leakage protection, including a **bonus-malus system** to determine the share of free allocation. For installations whose GHG emissions are above certain benchmark values, the amount of freely allocated emission allowances should vary based on the implementation of a climate-neutrality plan from 2026 onwards. Conversely, installations whose GHG emissions are below the relevant benchmark values should receive an incentive in the form of an additional free allocation. Recipients of free allowances would have to submit **climate-neutrality plans** by the start of 2026 to set out measures and investments to reach climate-neutrality by 2050 at installation or company-level, as well as intermediate targets to measure the progress and estimates of the impact of each measure on the emissions. The report addresses the link between the ETS system and the proposed **Carbon Border Adjustment Mechanism** (CBAM) (please see [Sustainability Outlook June 2021](#) and [Sustainability Outlook July 2021](#)) with the introduction of a temporary **Carbon Leakage Protection Reserve** to fill any possible gaps in the protection against carbon leakage, while avoiding double protection. Each year, the free allocation no longer provided to the CBAM sectors would be moved into such reserve. Where a yearly assessment by the Commission finds that the CBAM has been effective, the allowances in the reserve from the preceding year would automatically be auctioned and the revenues would accrue to the Innovation Fund. Where the assessment is negative, the allowances in the reserve from the preceding year would automatically be released back to industry.

The Rapporteur proposes to **include municipal waste incinerators in the ETS by 2028**, contingent upon an impact **assessment** to be conducted by the Commission. The Rapporteur explains that it is very important that all emitters are subject to a carbon price, which would also incentivise recycling, reuse and other waste management options in line with the circular economy. However, careful preparation is required to avoid large-scale deviation of waste from waste incineration towards landfills and exports to third countries, with a potentially hazardous impact on the environment.

The ENVI Committee is provisionally scheduled to consider further amendments on 14 March 2022.







### European Parliament Rapporteur proposes a 20% target for renewable fuels.

In his [draft report](#) on a new **Renewable Energies Directive (RED III)**, MEP Markus Pieper (EPP, Germany), the Rapporteur of the Committee on Industry, Research and Energy (ITRE) supports the **40% target for renewable energy by 2030** (please see [Sustainability Outlook July 2021](#) and [Sustainability Outlook November 2021](#)) of final consumption proposed by the European Commission.

His report calls for **innovative forms of renewable energy technology**, requiring that each Member State set an indicative target to ensure that at least 5% of new installed renewable electricity capacity between 2025 and 2035 is part of such innovative technology, such as wave or tidal technology.

The Rapporteur explains that the Commission's specifications for the production of green **hydrogen** and other renewable fuels of non-biological origin (RFNBOs) are too complicated and need to be simplified without adversely affecting the environment. He proposes a **70% target for green hydrogen** and other RFNBOs (without low carbon) for 2035. A broad-based strategy for the importation of renewable electricity, renewable hydrogen and low-carbon energy from as many suitable regions as possible was necessary, also to reduce fossil dependencies.

The report proposes a target of at **least 20% by 2030** for the amount of renewable fuels and renewable electricity supplied to the **transport** sector. At the same time, sub-targets for biofuels, synthetic fuels and e-fuels needed to be increased to send a real signal with regard to technological openness, as well as to provide options for transport sectors and regions that are hard to electrify.

Generally, the Rapporteur observes that the proposed directive has added a lot of requirements and reporting obligations, which should be reviewed or avoided if regulations are already in place at the national level. He calls for the Commission to submit proposals for the **administrative relief of economic operators**.

MEPs in the ITRE Committee may table amendments to the draft report until 18 March 2022.



### European Parliament report proposes that portable batteries must be removable.

Members of the ENVI Committee adopted the [report](#) on a new Batteries Regulation (please see [Sustainability Outlook January 2022](#)). Proposed amendments to the Commission proposal include the requirement for **portable batteries** (including batteries for light means of transport) to be designed for **“easy and safe removal and replacement”** by end-users or independent operators by 2024. The report observes that batteries used for traction in light means of transport, such as **e-bikes and e-scooters**, have not been clearly classified as batteries under the current directive, and constitute a significant part of the market due to their growing use in urban sustainable mobility. Therefore, it foresees an amendment to the proposed regulation to define “light means of transport battery” as “any battery in wheeled vehicles that can be powered by the electric motor alone or by a combination of motor and human power, including vehicles exempted from type-approval legislation or vehicles of type-approved categories [provided for in Regulation 168/2013] and with a weight below 25 kg”. The report also foresees new **due diligence obligations for the battery industry** and more ambitious **collection targets** for portable batteries. The Plenary of the Parliament is expected to adopt the content of the report in March.

Meanwhile, the **Council** – as the other EU co-legislator – reportedly made some progress in discussing the proposed regulation. A compromise text (not yet publicly available) proposes changes to the definition of batteries and to the timespans for implementing a number of provisions, including carbon footprint declarations. It also includes a separate classification for batteries used in “light means of transport”, which is similar to the one proposed by the report of Parliament, adding that the battery should be sealed.

Once both the European Parliament and Council have finalised their position, trilogues negotiations will start.

### European Parliament Rapporteur proposes more stringent thresholds for persistent organic pollutants (POPs).

In his [draft report](#) on the proposal for a regulation amending Annexes IV and V to Regulation 2019/1021 on **POPs** (please [see frESH Law Horizons June 2020](#)), MEP Martin Hojsík (RE, Slovakia), the Rapporteur of ENVI, proposes to further reduce the thresholds for POPs in waste. The Rapporteur considers that these limits can be implemented realistically in view of existing data and waste management possibilities. For example, he proposes lowering the so-called Annex IV Low POPs Concentration Limit (LPCL) for polybrominated diphenyl ethers (PBDEs) and Hexabromocyclododecane (HBCD) further (from 100 mg/kg; Commission proposal of 500 mg/kg) to 200 mg/kg with entry into force of the amending regulation, and 100 mg/kg five years after its entry into force. For short-chain chlorinated paraffins (SCPPs), he proposes a limit of 420 mg/kg. Additionally, the Rapporteur proposes including thresholds for Perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds in Annex IV. The Rapporteur believes that inclusion of PFHxS will give the EU clear negotiating mandate before the Meeting of the Parties to the UN Stockholm Convention, but also save administrative capacities of the co-legislators, anticipating that the convention will provide the PFHxS limit. The threshold was set in line with the lowered threshold for PFOA, its salts and PFOA-related compounds to reflect the commitment in the [Chemical Strategy for Sustainability](#) to reduce contamination by PFAS.

The report also proposes including a (not legally binding) recital to commit the Commission to revise Decision 2014/955 on the list of waste in order to provide that all wastes containing POPs in concentrations exceeding the limits in Annex IV to Regulation are to be classified as hazardous.

The deadline for amendments in the ENVI Committee is 8 March 2022, and the provisional date for the adoption of the report is 31 March 2022.



### European Commission starts revision of the rules on hazardous substances in electrical and electronic equipment (RoHS).

The Commission opened a [call for evidence](#) on the impact assessment (i.e. legislative roadmap) on EU rules to limit the use of **certain harmful substances in electrical and electronic equipment**, set out in Directive 2011/65 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS). One of the options it is considering is to simplify the RoHS Directive by introducing and revising **both legislative and soft measures** to improve the exemption criteria and process, as well as the trigger, criteria and process for substance restrictions. This option could be implemented by reforming the exemption process. Other ways might be entrusting the exemption and substance restriction assessments to an existing EU agency such as ECHA, reforming the provisions for spare parts, **clarifying the scope of the RoHS Directive**, introducing provisions related to **recycled material** and critical raw materials, reforming enforcement and market surveillance, and defining a clearer delineation between RoHS and other relevant legislation. Finally, the Commission will explore transforming the **RoHS Directive into a regulation** or repealing and incorporating it into the REACH Regulation. Following a repeal of the RoHS Directive, sustainable products legislation (in the context of the [Sustainable Products Initiative](#)) could include requirements related to the environmental recovery and disposal of electrical and electronic waste.

Stakeholders may provide feedback until 14 March 2022. The Commission plans a public consultation for Q1 2022, with a view to adopt the legislative proposal in Q4 2022.







### European Commission seeks views on the new mercury regulation.

The Commission launched a [public consultation](#) on the revision of the **Mercury Regulation 2017/852** consisting of 66 questions. According to the consultation document, significant amounts of mercury are still used in the EU, even though the EU has already implemented policies (such as the Community Strategy Concerning Mercury adopted in 2005 and reviewed in 2010) to reduce the risk of mercury exposure for both people and the environment. Use of mercury mainly takes place in **dental amalgam** and some products such as **lamps** or **measuring devices**. Based on a projection that took into consideration demand of dental amalgam from 2010 to 2018, its use is expected to further decrease by approximately 70% between 2018 and 2030. However, the resulting use would still be substantial, at approximately 8-17t in 2030, all of which would continuously be added to the stock of mercury and ultimately released into the environment.

Besides the phase-out of dental amalgam and the availability and cost of mercury-free alternatives, aspects covered by the public consultation include the prohibition of production in the EU and export of certain mercury-added products that are already banned from being placed on the EU market. The Commission also addresses the need to strengthen the regulation of late emissions of mercury and mercury compounds from crematoria and the alignment of Annex II of the Regulation (Mercury-added products) with relevant EU legislation regulating the placing on the market of mercury-added products.

The consultation is open for comments until 3 May 2022, with a view to the Commission adopting a legislative proposal in Q4 2022.

### EU set to include Resorcinol in the REACH Candidate List for thyroid-disrupting effects.

The European Commission succeeded in its intention to include **Resorcinol** in the so-called Candidate List under REACH, i.e. the list of Substances of Very High Concern (SVHC). In the REACH Committee, 19 Member States [voted](#) in favour of the Commission's draft [implementing decision](#) and three against, with five abstentions. Whereas the Member States that were in favour represent 54% of the EU's population, short of the 65% threshold required for a qualified majority vote, it passed on the basis that only three Member States voted against.

**Resorcinol** is a high-volume compound used to make tyres, rubber products, adhesives and industrial resins, as well as some cosmetics and medical products. It is the first substance to be identified as a SVHC because of its **thyroid-disrupting effects in humans**. In 2020, ECHA's Member State Committee (MSC) did not agree on identifying resorcinol as a SVHC due to its endocrine-disrupting properties. A majority of the MSC members concluded that there was scientific evidence of probable serious effects to human health due to hypothyroidism and potential neurodevelopmental effects during pregnancy. However, other members expressed different views on whether the substance was of an equivalent level of concern. In its draft implementing decision, the Commission concurred with the majority of the MSC members. The Commission considers that the adverse effects are of a severity similar to those of other substances that have been identified as SVHC due to their **endocrine disrupting properties** with probable **serious effects to human** health. Hypothyroidism has clinical implications related to nearly all major organs.



### European Commission presents options for reform of the REACH evaluation process.

In a [paper](#) to a meeting of the Competent Authorities for REACH and CLP (CARACAL) in January, the European Commission listed 18 potential changes in areas such as **dossier completeness check** and **evaluation, substance evaluation** and **decision-making procedures** (please see [frESH Law Horizons May 2021](#) and [frESH Law Horizons June 2021](#)).

According to the Commission, a legal instrument for **revocation of the registration number** is under development. This measure should be applied for persistent failure to comply. The Commission also considers a dossier “**expiration date**.” Exact options to implement such measure are still under discussion.

Another option was **coupling of fees to ECHA’s workload** caused by certain (in-) action, in particular for dossier updates, comments on draft evaluation decisions and new adaptations. In the field of testing proposals (TP), the Commission is working on changes that determine whether a TP must be submitted before proceeding with the testing, possibly extending TP to effectively all animal/vertebrate testing to help ensure it is only done where strictly necessary.

Work is also ongoing on changes to strengthen the common expectation that **dossiers must be “compliant at all times”**, not only at the time of a compliance check as perceived by some actors.





### ECHA presents a restriction proposal for PFAS in fire-fighting foams.

After announcing that it would take this step in January, the European Chemicals Agency (ECHA) presented a [proposal](#) for an EU-wide restriction on all per- and polyfluoroalkyl substances (PFAS) in **firefighting foams** (please see [Sustainability Outlook January 2022](#) and [Sustainability Outlook July 2021](#)). It aims at **preventing further groundwater and soil contamination** and health risks for people and the environment.

The **proposed restriction** comprises the following elements:

- Ban on placing on the market of PFAS-containing firefighting foams
- Ban on use of PFAS-containing firefighting foams
- Ban on export of PFAS-containing firefighting foams
- Transition periods for different sectors and uses
- Concentration limit for PFASs content (including contamination) in foams
- Requirement to implement a PFAS-containing firefighting foams management plan and best practice risk management measures

The proposal foresees various **transition periods**: an 18-month transition period for training and testing foams and for municipal fire services; a three-year transition for civilian ships; five years for portable fire extinguishers; and **10 years for the 12,000 industrial sites** covered by the Seveso III Directive 2012/18 on the control of major-accident hazards involving dangerous substances.

According to ECHA, the use of PFAS in firefighting foams is associated with risk to the environment – and human health via the environment – that current measures do not adequately address. PFAS emissions led to cross-border pollution. Even if additional measures were introduced at Member State level, there was potential for discrepancies in the definitions and scope of any national restrictions (e.g. definition of substances covered, uses covered, concentration thresholds and transition periods). Therefore, potential further **regulatory management at the EU level** was required. If adopted, the restriction could reduce emissions of PFAS into the environment by more than 13,000 tonnes over 30 years.

A six-month consultation is planned to start on 23 March 2022. ECHA's scientific Committees for Risk Assessment (RAC) and Socio-Economic Analysis (SEAC) will start assessing the proposed restriction. The combined opinion of the two committees is expected in 2023. Based on ECHA's proposal, the opinion of its committees, as well as the Commission's REACH Committee, the Commission will take the decision on the restriction and its conditions.

In parallel, five European countries (the Netherlands, Germany, Denmark, Sweden and Norway) plan to submit their [restriction proposal that will cover all PFAS in other uses](#) in January 2023 (after moving this dossier submission from July 2022, please see [Sustainability Outlook July 2021](#)).



### EU court advisor clarifies the Commission's duty of diligence when classifying chemicals.

In his [opinion](#) on an appeal raised by companies SGL Carbon, Química del Nalón, Deza and Bilbaína de Alquitrane, Advocate General (AG) Maciej Szpunar addressed the European Commission's duty of diligence in a classification case. In the judgments under appeal, the General Court dismissed actions for damages brought by the companies, which manufacture **pitch, coal tar, high temperature** (CTPHT; please see [Sustainability Outlook September 2021](#)). The companies claim to have suffered loss because of an erroneous classification of that substance as hazardous to the aquatic environment, which resulted from a manifest error of assessment by the Commission. According to settled case law of the court, the EU may incur **non-contractual liability** only if **three conditions** are fulfilled: (1) existence of a sufficiently serious breach of a rule of law intended to confer rights on individuals; (2) damage; and (3) a causal link between the breach of the obligation and the damage. The General Court accepted that the act alleged to have caused loss to the appellants was unlawful because of a manifest error of assessment by the Commission. However, it held that the error was excusable and, thus, did not constitute a sufficiently serious breach of a rule of law.

The opinion of the AG only addresses certain aspects of the appeal that concern the diligence to be exercised by the Commission. In the AG's view, the **provisions of the** Classification, Labelling and Packaging (CLP) Regulation 1272/2008, in particular the "summation method" included in Annex I, **governed the scope of the Commission's duty of diligence**. According to the AG, the General Court was right to hold that its finding there had not been a sufficiently serious infringement of the CLP Regulation applied equally, and on the same grounds, to the breach of the duty of diligence. The AG concluded that the **Court should reject the related arguments of the appellants**. The opinion of the AG is not binding upon the Court; however, the Court often follows it.





### France to adopt '3R Strategy' on plastic packaging.

The French government has [consulted](#) on a [draft strategy](#) on the reduction, reuse and recycling of single-use plastic packaging (3R Strategy). The 2020 **Anti Waste and Circular Economy Law** (AGEC) mandated the government to adopt this national strategy, as well as a reduction, re-use and recycling targets for single-use plastic packaging for 2021 to 2025 and for each subsequent five-year period. France set those targets in a [decree](#) that will be used as a basis for the strategy. It did not provide any restrictions, but set targets to effect the end of placing on the market of single-use plastic packaging in 2040. Among its objectives for 2025 are **reducing 20% single-use plastic packaging** (at least 50% by reusable packaging), **eliminating "useless" single-use plastic packaging** and **creating a recycling stream** for all single-use plastic packaging, including the use of recycled content.

To achieve these objectives, the French government, after consulting with the industrial sectors concerned, local authorities, and consumer and environmental protection associations, has drafted the 3R Strategy. It is structured in three parts:

- Summary of the **environmental, economic and social issues associated with single-use plastic packaging**, a description of the regulatory tools, support schemes and existing initiatives, as well as an introduction to the key framework and definitions
- Summary of the **current situation regarding the marketing of single-use plastic packaging**, describing the alternatives that contribute to the decree's objectives and their main deployment issues, proposing potential 2025 trajectories and 2040 perspectives broken down by sector, and addressing specific issues such as the assessment of the environmental impacts of the alternatives, investment needs and the articulation of the 2025 objectives and the 2040 ambition
- General and sectoral **action plan** to achieve the 2025 objectives and the 2040 perspective, based on **10 axes**, which include limiting useless and excessive packaging, reuse, substitutes, recyclability, collection and sorting, recycling capacities and recycled content

[Annex 6](#) of the draft strategy provides an **initial assessment of the situation in 42 sectors** (including beverages, hygiene/beauty, fresh processed food, etc.) to identify their "**3R potential**" in 2025 regarding **reduction, reuse, recyclability** (and improving the operational recycling trajectory) and **recycled content**. Each assessment takes into account the specificities of each sector (barrier properties, use, shelf life, distribution channels, etc.). Each sector identified is invited to develop its sectoral roadmap. The State will financially support all the sectors that commit to this approach.

The government said it will adopt the final Strategy **by the end of March 2022**.

If you are interested in UK as well as EU environment, safety and health law, procedure and policy, please take a look at our [frESH blog](#).

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