

European Union Sustainability Outlook

March 2023

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We are pleased to share our selection of relevant developments in EU sustainability law and policy over the past few months.

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Proposal for a Directive on Green Claims (COM (2023) 166 final)

Introduction

On March 22, 2023, the European Commission presented a legislative proposal on [substantiation and communication of explicit environmental claims \(Green Claims Directive\)](#), part of the [third package of proposals on circular economy](#), and representing an important feature of the [European Green Deal](#).

The so-called green claims are assertions made by firms about the environmentally beneficial qualities or characteristics of their goods and services. A typical example of a green claim is when a company that claims to sell its products in “packaging made of 30% recycled plastic” or that it declares to be “100% carbon neutral.”

The proposed directive aims to ensure that green claims are truthful and based on scientific evidence. It refers to claims that are not currently covered by other EU rules and that are voluntarily disclosed to consumers by a company. Green claims usually refer to the characteristics or performance of a product, but can also relate to the company itself, for example, by emphasizing the sustainability of its production chain or the fact that the company is climate neutral.

Objectives

The proposal mainly aims to protect the consumer against “greenwashing” phenomena, that have been facilitated to date by the absence of a horizontal legislative framework. With this law, the European Commission intends to enable the consumer to make informed choices and opt for goods and services that have been produced in an environmentally sustainable manner. The other objective of the proposed law is to ensure that competition on the market is not altered, preventing a company from acquiring an undue commercial advantage due to the fact that its products are defined as “green,” unsupported by scientific evidence.

To achieve these objectives, the proposal provides that before being able to describe their products as “green,” companies, must request an independent scientific evaluation. Furthermore, it will be possible to create new labels that certify the environmental sustainability of a product (environmental labeling schemes) only with the prior authorization of the European Commission.

What Is the Impact for Companies?

When companies make voluntary green claims, they will have to respect newly introduced minimum requirements for substantiation and communication. Toward this end, the EU member states are called to set up verification and enforcement processes to be performed by independent, accredited reviewers.

Among obligations set by the proposed law:

- Voluntary green claims must be supported by scientific evidence
- In case of comparison with products or services of other companies, the comparison must be based on reliable data
- Aggregate scoring of the product’s overall environmental impact on, for example, biodiversity, climate, water consumption, soil, etc., is not permitted unless otherwise exempted in other EU laws in force

Furthermore, the use of existing environmental labeling schemes is encouraged, while new private and public schemes, unless developed by the EU, will not be allowed. The only exception is if those claims are proven to have a greater environmental impact than existing ones and have passed the pre-approval process within the European Commission.

Impact on Non-EU Companies

Companies based outside the EU are subject to the obligations set by this law if they sell products to consumers within the EU. Non-EU companies will, therefore, have to comply with requirements set forth in the law. Furthermore, non-EU companies, without prior authorization from the European Commission, will not be allowed to introduce new environmental labeling schemes. In fact, for the approval request to be successful, the non-EU company must first demonstrate the added value of the proposed scheme for the EU market in terms of their environmental impact, compared with existing European labeling schemes.



Net Zero Industry Act

On March 16, 2023, the European Commission published a proposal for a [Regulation \(COM 2023/161\) "on establishing a framework of measures for strengthening Europe's net-zero technology products manufacturing ecosystem"](#), the [Net Zero Industry Act](#). This proposal is one of the main features of the [Green Deal Industrial Plan \(GDI Plan\)](#), adopted by the European Commission last month to counteract the public subsidies scheme adopted by the US in August 2022 – the Inflation Reduction Act (IRA). The GDI Plan's main objective is to create a regulatory environment that supports the uptake of the net zero industry in the EU, in order to:

- Increase the production of green energy in Europe
- Reduce dependence on imports from third countries
- Limit the CO2 emissions deriving from fossil energy sources

The proposal for regulation has the primary objective of scaling up the manufacturing of technologies that are key to achieving climate neutrality, such as solar panels, batteries and electrolyzers, among others, or key components of such technologies, such as photovoltaic cells or the blades on wind turbines. The proposal's ambition is that at least 40% of the EU demand for clean tech is made domestically by 2030.

In the [annex of the proposed regulation](#), strategic net zero technologies that will receive "particular" support are identified. Those technologies are the following:

- Solar photovoltaic and solar thermal technologies
- Onshore wind and offshore renewable technologies
- Battery/storage technologies
- Heat pumps and geothermal energy technologies
- Electrolyzers and fuel cells
- Sustainable biogas/biomethane technologies
- Carbon capture and storage (CCS) technologies
- Grid technologies

For underpinning investments in net zero technologies, the regulation proposes a number of measures such as:

- **Acceleration and simplification of permit-granting processes for net-zero technology manufacturing projects** – This will be achieved also by assigning the status of primary public interest projects to projects that qualify as "net zero strategic projects".
- **Prioritization of net zero products in public tenders and auctions** – Public authorities, in buying energy products, will be allowed to give significant importance, in the evaluation of the offers, to sustainability and resilience criteria. This provision aims to boost diversification of supply for net zero technologies and to favor their acquisition over energy produced from fossil sources.
- **Establishment of a European net zero platform** – Among its functions will be laying the foundations for the conclusion of partnership agreements with third countries to be identified (Net-Zero industrial partnerships).



European Hydrogen Bank

As part of the Net Zero Industry Act, the European Commission has adopted a communication on the [European Hydrogen Bank](#) with the main objective of increasing the production and uptake of renewable hydrogen within the EU. This initiative, which is intended to be operational by the end of the year, is based on four pillars:

- EU domestic market creation
- International imports to the EU
- Transparency and coordination
- Streamline existing financing instruments

The bank will provide subsidies to hydrogen producers in the form of a fixed premium per kilogram of hydrogen produced for a maximum of 10 years of operation. It will also establish exchange systems with countries outside the EU, for promoting the import of hydrogen from third countries. To that end, a green premium for renewable hydrogen imports will also be envisaged, as well as an auction system that will replicate the mechanism used within the EU. The European Hydrogen Bank will also support the coordination of cooperation and trade with third countries via international agreements, such as renewable energy memoranda of understanding, renewable energy chapters in trade agreements, etc.

The Critical Raw Materials Act (Proposal for Regulation)

The European Union, in the framework of the [Green Deal Industrial Plan \(GDI\) strategy](#), on March 16, 2023, presented a proposal for regulation, establishing a framework for ensuring a secure and sustainable supply of critical raw materials – [The Critical Raw Materials Act](#). The latter is an integral part of the EU's new green tech strategy, the GDI, as it fosters the supply of raw materials that will also be indispensable for the production of "net zero industry technologies" of which the [Net Zero Industry Act](#), also adopted on March 16, aims to support the uptake in Europe.

The main objective of this regulation is to increase the supply in Europe of nonenergy, nonagricultural raw materials that are important for the EU economy, and the supplies of which are subject to a high level of supply risk. The proposed regulation sets decidedly ambitious objectives, including the achievement of a raw material extraction capacity equal to 10% of the EU's needs by 2030. Also, it stipulates that, by 2030, at least 40% of identified critical and strategic materials should be processed in Europe, that the EU recycling capacity raises to 15% minimum, and that Europe should not be more than 65% dependent on imports from a single third country.

In the proposed regulation, raw materials are defined as "a substance in processed or unprocessed state used as an input for the manufacturing of intermediate or final products, excluding substances predominately used as food, feed, or combustion fuel." [Annexes I and II of the proposed regulation](#) contain a list, respectively, of the raw materials defined as "strategic" and of the raw materials defined as "critical". This distinction is relevant because, depending on the raw materials' categorization, different authorization procedures are envisaged. In this respect, the law would attribute priority to raw materials defined as strategic, through streamlined permitting procedures for the implementation of strategic projects. The proposed regulation establishes that the list of raw materials can be, periodically, updated by the European Commission through delegated acts.

An important focus of the proposal is on improving the efficiency of supply chains, for the purpose of which the integration of monitoring and auditing systems is envisaged. Private companies will also be subject to these procedures, which will include a mapping obligation in relation to where the raw materials are extracted, processed, or recycled. The proposed regulation also specifies that improvements in supply chains must be based on measures aimed at limiting the impact on the environment and protecting the human rights of the people involved in the production line. In this context, the EU also commits to contribute to the improvement of the economic development of third countries involved in the supply chain (for, example the countries where the extraction of raw materials occurs).

Since the European Union will never be self-sufficient in supplying such raw materials, imports will continue to be the main means of supply. For this reason, the proposed regulation envisages leveraging strategic partnerships with third countries and international agreements, proposing greater engagement with international partners who are deemed "reliable". The latter will be identified, in particular, in developing economies and emerging markets, for which cooperation will be launched within the framework of the [European Global Gateway strategy initiative](#).



A Secure and Sustainable Supply of Critical Raw Materials in Support of the Twin Transition (Communication)

The European Commission, together with the Critical Raw Materials Act, issued a [communication](#) that focuses mainly on the launch of global partnerships. In this context, the communication announces the creation of a Critical Raw Materials Club, comprising countries intending to strengthen supply chains. The club will also fight unfair trade practices through the conclusion of free trade agreements.

Due to the lack of availability of raw materials in Europe, cooperation with third countries in this context is essential and is relevant for non-EU companies. The cooperation will take place both through trade agreements and through other initiatives that will be initiated by the Critical Raw Material Club and in the framework of the [Global Gateway Strategy](#). Therefore, the developments of both initiatives must be followed with attention and interest, especially by companies not based in the EU. In fact, non-EU companies, even if not dealing directly with the production of the raw materials listed in [annexes 1 and 2 of the proposed regulation](#), could benefit from the intensification of trade relations between the EU and third countries.

It should also be noted that the list of raw materials will be updated periodically, hence it will be relevant to monitor what materials will be added to the initial lists. Mapping obligations for private companies, on where raw materials are extracted, used, or processed, are also proposed. Similarly, the proposal includes due diligence obligations aimed at limiting adverse impact of production lines and value chains on human rights and the environment. The burden on companies to provide this information is limited to market operators active in extraction, refining or recycling of critical raw materials.

Transition Pathway for the Chemical Industry

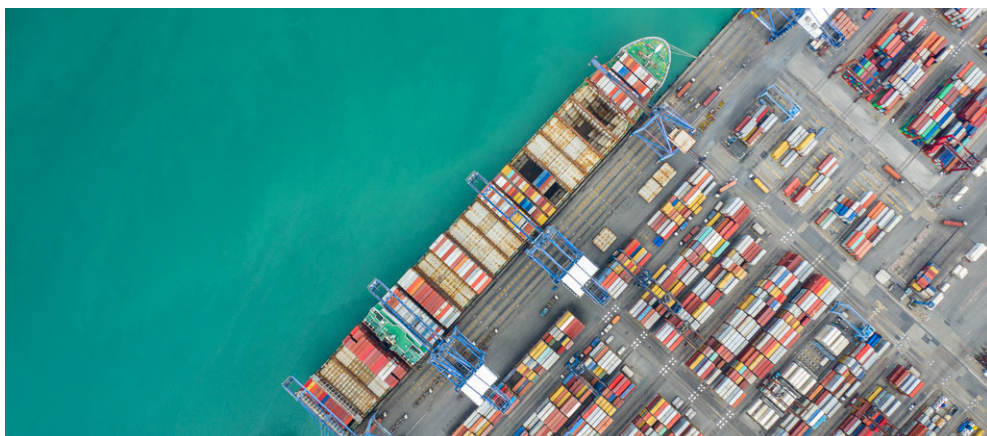
On January 27, 2023, the EU Commission published the strategy, [Transition Pathway for the Chemical Industry](#). This is a new European strategy which, in line with the [2020 European industrial strategy](#), aims to underpin the green and digital transition of the European industry (the so-called twin transition).

It was co-developed by the European Commission with the direct involvement of EU member states, the chemical industry, social partners, NGOs, and academia. Cooperation should be a key feature of the initiative also for the implementation phase.

The strategy identifies 26 topics and over 100 related actions aimed at facilitating the transformation of the chemicals industry, ensuring its competitiveness and its contribution to the manufacturing of the green and digital technologies of tomorrow.

- The 26 topics and the underlying actions are included in a roadmap divided into:
- An action-oriented component
- A technological component
- A regulatory component that summarizes the main EU legislative dossiers that have an impact on the chemical industry

The European Commission is expected to launch the co-implementation process, with a call for commitments and pledges, in the second quarter of 2023.



Basel Convention – Electronic and Electrical Waste Subject to PIC Procedure as of 2025

Upon the proposal of Ghana and Switzerland, the 15th meeting of the Conference of the Parties (COP15) to the Basel Convention adopted amendments adding both hazardous and nonhazardous electronic waste to the convention's annexes. In practical terms, these amendments mean that, from January 1, 2025, transboundary movements of electrical and electronic waste – both hazardous and nonhazardous – will be subject to the Prior Informed Consent (PIC) procedure. A United Nations Environment Program (UNEP) expert working group is preparing updated technical guidelines for the transboundary shipment of electrical and electronic waste focusing on the differentiation of waste from non-waste. The updated guidelines will be considered at COP16 in Geneva in May 2023.

UN Treaty on Plastic Pollution – EU Submitted Its Stance on Unnecessary Plastic Products

The next meeting of Intergovernmental Negotiating Committee (INC) aiming at developing a United Nations treaty on plastic pollution will take place in Paris, France in May 2023. Ahead of the event, the European Commission submitted its [stance on the options for the legally binding instruments to end plastic pollution](#) (February 13). Among possible measures, the European Commission suggested laying down legal restriction on the use of plastic products that are problematic, avoidable and unnecessary. The following plastic products were shortlisted as potentially falling into this category:

- Plastic products that are not reusable or recyclable in accordance with design criteria
- Plastic products that pose a significant risk to human health and/or the environment; for example, plastic shopping bags
- Plastic products that can be avoided or replaced, because its use does not represent an essential functionality (including unnecessary single-use plastics that are prone to becoming litter); for example, straws, stirrers, sticks for balloons, and expanded polystyrene (EPS) food and beverage containers
- Plastic products that are most frequently found in the environment (due to mismanaged waste, littering, inappropriate use, etc.); for example, cigarette filters, cutlery, plates, and ear-swab sticks

The European Commission called on UNEP to collect and synthesize possible definitions and criteria for problematic and unnecessary/avoidable plastic products in an options paper before the next INC. The material will later serve as a reference point for further political negotiations in Paris.

Groups of Products and Materials Shortlisted for European Commission Ecodesign

The European Commission's proposal for [Ecodesign for Sustainable Products Regulation](#) (ESPR) was tabled in March 2022 with the objective of reducing the environmental impact of products across their life cycles. The ESPR builds on the approach of the [Ecodesign Directive](#), the scope of which is limited to energy-related products, but with the intention of regulating a broader range of physical products. Interestingly, the products group to be covered by the provisions of ESPR will be established in the working plans – secondary legislation that will be adopted by the European Commission.

Even though the ESPR is still a proposal, public consultations on the [first list of the new group of products to be covered by ecodesign requirements](#) were opened by the European Commission on January 1 and will last until May 12. The proposed list identifies:

- **End-use products** – Textiles and footwear; furniture; ceramic products; tires; detergents; bed mattresses; lubricants; paints and varnishes; cosmetic products; toys; fishing nets and gear; absorbent hygiene products.
- **Intermediary products** – Iron and steel; nonferrous metals; aluminum; chemicals; plastic and polymers; paper, pulp paper and boards; glass.

The input provided by the stakeholders during the public consultations will be summarized in a European Commission report, followed by a more detailed synopsis report. Following this first online consultation, the commission will run targeted consultation exercises, tentatively planned for Q2 of 2023.



How We Can Help

We combine high end legal expertise with industry leading political and business advisory services to help our clients successfully navigate the complexities of EU policymaking.

Our team is widely recognized as one of the pre-eminent public policy law teams in Brussels and around the world. Our collective knowledge of “how government works” derives from the skill and experience of our lawyers and policy advisers, many of which joined the firm from senior positions in national governments and industry regulatory agencies.

By combining legal and policy advisory services, we help our clients anticipate and counteract threats, and to create business opportunities - while navigating the EU regulatory and policy landscape.

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