

European Union Sustainability Outlook

October 2023

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Negotiations on Packaging and Packaging Waste Regulation Progress

After the summer recess, the proposal for a Packaging and Packaging Waste Regulation was the subject of intensive negotiations in the EU Parliament and the Council. Both institutions want to introduce significant changes to the EU Commission's proposal. From the Parliament's perspective, implementation of a recycled content credit system turned out to be the most contentious amendment. The solution was thought to allow producers of plastic packaging to meet recycled content targets by purchasing credits from entities that exceed the required targets – but was eventually rejected by shadow rapporteurs. The vote on the proposal in the Environmental Committee of the EU Parliament to place on October 24, just under a month before the plenary session vote planned for November 20. The Environment Council will deliberate on the proposal on December 18.



Waste Framework Directive – Rapporteur Proposes Extension of Its Scope

The EU Commission adopted its proposal for revision of the Waste Framework Directive in July. The revision focuses primarily on the EU's growing textile waste problem and its ineffective waste management practices. The proposal introduces a mandatory Extended Producer Responsibility (EPR) scheme, designed to make producers responsible for the costs of end-of-life management of textile products, apparel, clothing accessories and footwear they place on the market. The proposal is currently under examination in the EU Parliament and by the Council. The work of both co-legislators is progressing at a fairly rapid pace.

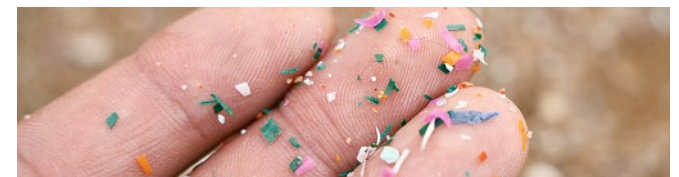
The draft report of the file's rapporteur of the Environmental Committee has already been made available; the document suggests extending the future rules to two more product categories – mattresses and carpets – whose waste is likely to end up being incinerated. The committee is tentatively scheduled to vote on the draft report and amendments on February 14, with voting on the plenary session of the EU Parliament slated for March 11. The proposal will be subject to the deliberations of the Agriculture and Fisheries Council, which will take place between October 23 and 24.

EU Commission Adopts Restriction on Intentionally Added Microplastics – The Act Is Now Published

The EU Commission regulation restricting – under Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) – microplastics intentionally added to products, was published in the Official Journal of the EU on September 27, and its provisions entered into force on October 17. The proposal prohibits placing on the market microplastics as substances on their own, or in mixtures, added to obtain the desired characteristics of product. Microplastics in certain applications will be exempted from the restriction, but their suppliers might be subject to certain reporting and information obligations. Restriction will not apply, for instance, to microplastics for use at industrial sites.

Nevertheless, specific entities handling these microplastics will be obligated in the future to (i) provide guidelines to industrial users on preventing microplastics release and (ii) submit annual reports to the European Chemical Agency (ECHA) concerning pellet losses, both on-site and during transport.

The ban's transition periods will vary depending on the application of the microplastics, with the timeframes ranging from four years for rinse-off cosmetics to as long as 12 years for makeup products, all counted from the proposal's entry into force.





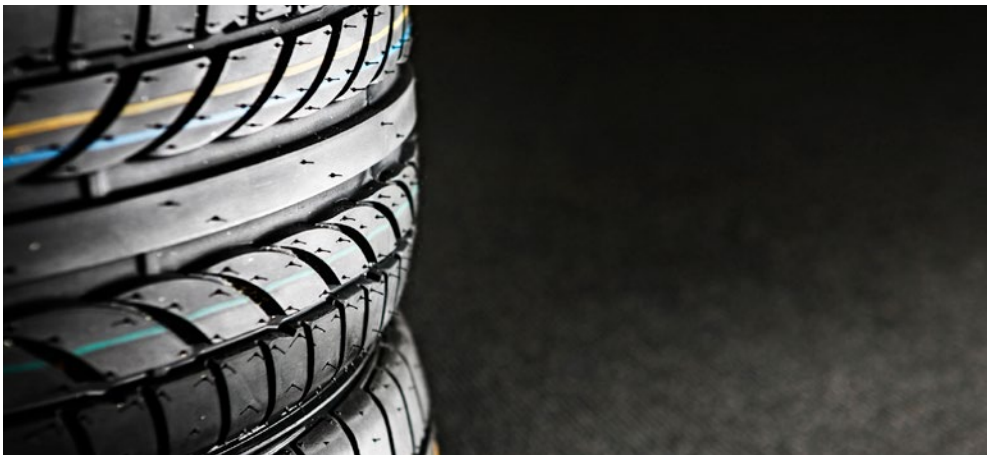
EU Commission Adopts Delayed and Reduced Proposal on Unintentional Release of Microplastics

On October 16, the EU Commission adopted the [proposal for a regulation on preventing plastic pellet losses to reduce microplastic pollution](#). The act was originally intended to have much broader scope and to also target, in addition to plastic pellets, tires and synthetic textiles. Its scope was scaled down as negotiating such an extensive dossier before the upcoming parliamentary elections would have posed significant challenges. The limited proposal will target handling of plastic pellets at all stages of the supply chain. The regulation will apply to (i) operators of installations handling over five tons of plastic pellets, as well as (ii) carriers of plastic pellets, with varying obligations for EU and non-EU carriers. As a general principle, both operators and carriers will be required to avoid pellet losses. Operators will need to establish a risk assessment plan for each of their installations. Micro and small enterprises will be allowed to self-declare conformity with this obligation to the authorities – an exemption that also extends to medium and large enterprises handling less than 1,000 tons of plastic pellets annually. Other entities will be obliged to obtain third-party certification. Member states will be obliged to ensure that individuals are allowed to claim and obtain compensation for “damage to human health which occurred as a result of an infringement of this regulation”. The proposal specifies that the new requirements, with limited exceptions, will be applicable 18 months after the regulation’s entry into force. The dossier will then be forwarded to the EU Parliament and the Council for further legislative deliberations.



Ecodesign for Sustainable Products Regulation – Co-legislators Discuss Obligations of Online Markets

The Ecodesign Regulation is currently advancing through the legislative process, albeit with a delay. The Council and EU Parliament have postponed the second round of trilogue, which was originally scheduled to take place on October 10, was postponed until November. According to the report submitted by the Committee on the Internal Market and Consumer Protection (IMCO), during the first trilogue held on September 18, 2023, the Council and the Parliament could not reach an agreement on the provisions related to the requirements for online markets. As stated in the recitals of the proposal, online marketplaces should take responsibility for addressing the sale of products that do not comply with eco-design requirements and should cooperate with market surveillance authorities to this end. While the Parliament proposes that online marketplaces should have a general obligation to cooperate with authorities in order to facilitate action to eliminate or reduce risks, the Council is inclined towards providing an exemplary catalogue of obligations rather than using such a broad formulation.





PFAS Restriction Proposal – Anticipated Next Steps

As of the latest developments, the public consultation on the restriction proposal has recently concluded, yielding a record number of contributions to the ECHA. This update briefly recaps the key milestones of the restriction proposal thus far and focuses on the upcoming steps and potential deadlines.

On February 7, 2023, a proposal to restrict over 10,000 per- and polyfluoroalkyl substances (PFAS), commonly known as “forever chemicals”, was jointly submitted by Germany, Denmark, the Netherlands, Sweden and Norway. The proposed restriction encompasses the manufacturing, introduction to the EU market, and usage of PFAS as standalone substances, as well as their inclusion in the EU market within other substances, mixtures or articles. Following the proposal, a public consultation period was initiated by ECHA from March 22 to September 25, 2023.

Outcomes of the Public Consultation

During the public consultation, numerous comments expressing concerns from various industries were received by ECHA regarding the limited time available to identify PFAS uses across different sectors. Apprehensions arose as industries grappled with identifying all uses and sub-uses, raising worries about the potential inability to produce certain goods due to a lack of alternatives. Industries such as electronics, automotive and aerospace are currently assessing the impact of the proposed restriction. A contentious issue revolves around the overall scope of the restriction, with some firms advocating for a more targeted approach based on substances deemed “hazardous” in specific applications.

Concerns have been voiced regarding the demonstrated risk of these substances across all affected uses, creating uncertainty about compliance with Article 68(1) of the [REACH Regulation \(EC 1907/2006\)](#).

Critics argue that the proposal lacks a comprehensive risk assessment, relying heavily on “environmental fate” rather than scientifically substantiated risks and effects. Adoption of the current proposal could potentially lead to legal challenges. Some argue that the restriction may impede EU efforts to reduce greenhouse gas emissions, as PFAS are integral to green technologies, conflicting with major EU strategies such as the EU Green Deal Industrial Plan.

Next Steps

The proposed restriction is subject to potential revisions based on feedback received during the public consultation, with Member States having the option to modify or withdraw the proposal. ECHA’s committees, namely the Socio-Economic Analysis Committee and Risk Assessment Committee, are actively working on their opinions, and opinions on specific topics are expected in March 2024. These opinions will be conveyed to the European Commission, which will, if conditions in Article 68 of REACH are met, draft an amendment to Annex XVII.

The final decision lies with EU member countries and will be made through a comitology procedure chaired by the European Commission. This decision-making process will consider scientific aspects and the internal policy considerations of member states. Predicting the overall timeline is challenging due to the volume of comments and diverse interests, making strict adherence to REACH timelines improbable. Anticipated political changes in 2024 (EU Parliament’s election) may further impact the timeline. Thus, if the proposal is approved, implementation is likely to occur around 2026.





Postponement of the Revision of the **REACH Regulation (EC 1907/2006)**

The anticipated revision of the REACH Regulation (EC 1907/2006) is highly unlikely to be presented before the conclusion of the European Commission's mandate in spring 2024. Initially planned for November 2022, the revision's deadline was first announced by the European Commission before summer 2023. However, the revision proposal has not been submitted by the European Commission before the summer, and, post-summer, the revision proposal was not even mentioned in the State of the Union speech on September 13 among the dossiers to be addressed before the end of the Commission's mandate. In a recent development, Maroš Šefčovič, the newly appointed head of the dossiers encompassed in the EU Green Deal strategy, provided details, upon the request of the European Parliament, on the remaining proposals to be addressed before the end of the Commission's mandate in spring 2024. In this context, he did not confirm the publication date for the REACH revision proposal. In a very recent development, Environment Commissioner Virginijus Sinkevičius acknowledged a "realistic possibility" of postponing the long-awaited revision of the EU's REACH chemicals framework to the next Commission. Sinkevičius emphasized that presenting the proposal now could leave a crucial industry in limbo, making it challenging to finalize REACH before the current Commission's mandate ends. On a related note, it should also be stressed that the [Commission work program for 2024](#) does not include the REACH revision. While this is not a definitive indication of the proposed REACH revision being delayed, all signs point to the next European Commission taking charge of this matter.

Months ago, it was announced that the Commission's proposal on the revision of REACH would be split into two parts. More urgent topics, including increased information requirements for low tonnages and the most harmful substances, would be addressed in secondary legislation and adopted with less delay. Given the likely postponement of the revision, it remains to be seen if this approach will be maintained with the new timeline. This decision is likely to be made by the Commission at a later date and is challenging to predict it at the current moment.

The European chemicals industry, initially resistant to the REACH revision due to implementation costs amid the energy crisis, now seeks clarity on the Commission's plans to prepare accordingly. Therefore, in addition to NGOs that have consistently advocated for expediting the REACH revision since 2022, the industry is now exerting pressure on the European Commission, seeking clarity in a sector so crucial to the EU and global economy.





Classification, Labelling and Packaging of Substances and Mixtures (CLP) – EU Parliament Position Adopted

On October 4, 2023, the European Parliament adopted its position on the revision of the CLP Regulation. The European Parliament will use this position for negotiations with the Council of the EU during the trilogues leading to the adoption of the law.

On December 19, 2022, the European Commission proposed a regulation to amend [Regulation \(EC\) No 1272/2008](#). The main objectives of this revision are:

- Ensuring adequate and uniform classification of hazardous chemicals across the EU
- Improving hazard communication by making labels more accessible and understandable, allowing companies greater flexibility to reduce administrative burdens
- Ensuring uniform application of rules governing chemical hazard classification and communication across all actors in the supply chain, including online sales and imported articles
- Clarifying legal uncertainties associated with notifications that companies must submit to poison centers for emergency health responses

An integral part of the law is [Commission Delegated Regulation \(EU\) 2023/707](#), effective from April 20, 2023. This delegated regulation amended Annexes I, II, III, and VI to the CLP Regulation, introducing hazard classes and labelling requirements for substances and mixtures and the corresponding scientific criteria to identify them.

In the lead-up to the vote on October 4, discussions within the EU Parliament primarily centered on the handling of substances containing more than one constituent (MOCS). The cosmetics and fragrances industries expressed concerns regarding the potential classification of these substances as mixtures, which could impose labelling obligations, particularly for essential oils.

Despite the European Parliament's support for aligning the treatment of MOCS with mixtures, in its position, the Parliament included an exemption for substances of "renewable botanical origin that are not chemically or genetically modified". Furthermore, the Parliament made a formal request to the Commission for a report evaluating the management of exempted substances after six years. This requested time frame extends two years beyond the review period sought by the Council.

The position of the European Parliament also sets a one-year deadline for the Commission to decide on the harmonized classification and labelling of chemicals within the new hazard classes already on the REACH candidate list. Moreover, the Parliament requires that CLH proposals prioritize groups of substances over individual ones, where justifiable. The Parliament also calls on the Commission to explore introducing hazard criteria for immunotoxicity and neurotoxicity by the end of 2025 and to assess progress in the development of alternative methods to animal testing at least every three years.

The Council's negotiating mandate, adopted on June 30, is mostly aligned with the objectives of the regulation proposed by the EU Commission but introduces several amendments to enhance clarity and legal certainty. Notable provisions include adjusting label form and design to address legibility issues, clarifying concepts and rules related to digital labelling, and calling on the Commission to prepare a report four years after the entry into force of the CLP regulation regarding the classification provisions for chemical substances with more than one constituent (MOCS).

The first round of trilogue negotiations is expected to take place in late October or November 2023. It is likely that the two co-legislators will reach an agreement before the end of the European Parliament's term in spring 2024.





Consumer

Provisional Political Agreement Reached for the [Empowering Consumers for the Green Transition Directive](#)

The Council and the Parliament have reached (on September 19, 2023) a provisional political agreement on the directive to empower consumers for the green transition. This new directive is aimed at preventing companies from engaging in misleading environmental claims. This initiative, presented by the European Commission in March 2022, complements existing legislation on sustainable product design and establishes an EU-wide right to repair.

More precisely, the objective of the law is to amend directives [2005/29/EC](#) (Unfair Commercial Practices Directive) and [2011/83/EU](#) (Consumer Rights Directive) to empower consumers for the green transition by providing better protection against unfair practices and improved information about products' durability and reparability.

The final agreement prohibits businesses from making claims such as "climate neutral" or "carbon neutral" when these assertions are not substantiated by verified CO2 offsets. This is a response to the increasing use of carbon offsetting schemes by companies to compensate for their CO2 emissions, sometimes giving a false impression of their environmental efforts. Concerns have been raised by campaigners and scientists regarding the effectiveness and transparency of these schemes.

The legislation also restricts the use of labels like "biodegradable", "eco-friendly", or "green" unless companies can provide substantial and publicly available evidence to support their claims. Additionally, it puts an end to practices that intentionally limit the lifespan of products, known as early or planned obsolescence. Liability for such practices is contingent on the availability of information about the design features responsible for such limitations. The legislation introduces a standardized label to provide information on the durability of new products.

The political agreement now awaits final approval from the European Parliament and the Council of the EU before becoming enforceable.

Green Claims Directive

Another law that the EU is currently working on, which more specifically addresses greenwashing, is the [Green Claims Directive](#). This law aims to regulate voluntary (green) claims, ensuring that they are substantiated on scientific bases. Among the green claims, the directive includes environmental labels, for which it introduces a preauthorization system to be undergone before the commercialization of products using such labels. The Green Claims Directive, by specifically addressing the issue of environmental claims, positions itself as *lex specialis* in relation to the Directive to Empower Consumers for the Green Transition, which has the more general purpose of prohibiting practices that could be misleading for consumers. The progress of this law, which was presented in the spring of 2023, is further behind compared to the directive discussed in the previous article "Empowering Consumers for the Green Transition Directive". Although the co-legislators have expressed the intention of adopting the law before the expiration of this Parliament's term, there is a serious risk that there may not be enough time for this to occur.

[EU Commission Gives Recommendations for Enhancing the Return of Used Mobile Phones, Tablets and Laptops](#)

Used mobile phones, tablets and laptops have the potential to be a valuable source of critical raw materials. However, official data shows that an estimated 700 million unused mobile phones are currently stored in households across the EU. In an effort to increase the take-back rate of used small electronic devices and counteract this phenomenon, the EU Commission has adopted a series of recommendations addressed to Member States. The proposed measures are quite diverse and include, among others, (i) introducing financial incentives for the return of small consumer electronics, such as rebates or financial rewards; (ii) implementing a deposit refund system; (iii) establishing drop-off and collection points at post offices; and (iv) setting up search tools for consumers to find collection and return points. Member States are also encouraged to exchange best practices. While these recommendations are not mandatory, they can provide a push for future national initiatives.





Financial Reporting

Commission Delegated Regulation Adopts the European Sustainability Reporting Standards (ESRS)

Introduction

The provisions of the [Directive on Corporate Sustainability Reporting](#) (CSRD) are nearing the point of implementation. Certain companies, as detailed below, will be required to commence their reporting endeavors starting from January 1, 2025, and based on the financial year 2024. For this purpose, the European Commission, through secondary legislation, has defined the standards that companies must adhere to in order to comply with the reporting obligations introduced by the CSRD.

This was achieved by enacting a [Commission delegated regulation](#) that establishes the European Sustainability Reporting Standards (ESRS) which are specifically designed for European companies. Non-EU companies which are subject to the new reporting standards starting from the financial year 2028, will have separate standards formulated for them at a later stage. However, non-EU parent companies, under certain conditions, such as those with an EU branch or a publicly listed subsidiary, will also be obligated to report information before the financial year 2028. This reporting obligation extends through their EU branches or subsidiaries, which, in their reports, must include information related to the non-EU parent company. In these cases, albeit indirectly, non-EU companies will also be impacted by these standards before the financial year 2028.

Key Features of the ESRS

The Commission delegated regulation comprises two annexes:

- [Annex I](#) contains the comprehensive initial set of ESRS, offering detailed guidelines for reporting sustainability aspects.
- [Annex II](#) includes a list of acronyms and a glossary for use when conducting sustainability reporting in alignment with the ESRS.

The ESRS aligns with global benchmarks, drawing from the recognized standards of the International Sustainability Standards Board (ISSB) and the Global Reporting Initiative (GRI). In its operational framework, the ESRS adopts a “double materiality” paradigm. This mandates companies to not only disclose their impacts on people and the environment, but also describe the intricate dynamics between social and environmental aspects and their corresponding financial risks and opportunities.

The scope of the ESRS is extensive, encompassing 12 primary categories. These categories cover a comprehensive spectrum of sustainability aspects, including, but not limited to, climate considerations, pollution, biodiversity, resource utilization, social dimensions, and governance. The ESRS includes two fundamental cross-cutting standards, namely “General Requirements” and “General Disclosures”. These standards serve as comprehensive guidelines for companies to follow in their reporting endeavors.

The remaining 10 standards address more specific areas, allowing companies within the scope to refrain from reporting in these sectors if they demonstrate that such areas are not pertinent to their specific line of business. To this end, companies must conduct the so-called “materiality assessment”. This is a mandatory internal evaluation carried out by the companies themselves and is subject to external validation. The purpose of the materiality assessment is precisely to ensure that companies report only data that is relevant to the sector in which the respective entity operates.





Financial Reporting

Next Steps

The ESRS were adopted by the Commission on July 31, 2023. Both the European Parliament and the Council had until October 21, 2023, to raise any objections. On October 11, Members of the European Parliament (MEPs) from two political groups, namely Renew Europe and the European People's Party (EPP), formulated an [objection](#) to the delegated regulation. Those MEPs who supported this objection urged the Commission to create a new delegated regulation that includes less complex sustainability reporting standards, based on quantitative key performance indicators (KPIs). Furthermore, MEPs advocated for the new text to ensure a reduction in the volume of reporting and the inclusion of voluntary and comparable standards tailored for Small and Medium-sized Enterprises (SMEs). The objection presented received 261 votes in favor, with 359 votes against, and 11 MEPs abstained from voting. Consequently, the objection, which must be approved by a majority vote, was rejected by the Parliament.

Regarding the next steps, considering that there have been no further objections from the European Parliament, and the Council has not opposed it within the specified deadline, the scrutiny can be deemed complete. The next step is the publication in the Official Journal, and the delegated regulation will become effective on the third day following publication.

Reminder Regarding the Reporting Schedule

Companies are required to commence reporting as per the following timetable:

- Companies previously subject to the Non-Financial Reporting Directive (NFRD) (large listed companies, large banks and large insurance undertakings – if they have more than 500 employees), as well as large non-EU listed companies with more than 500 employees – financial year 2024, with the first sustainability statement published in 2025.
- Other large companies, including other large non-EU listed companies – financial year 2025, with the first sustainability statement published in 2026.
- Non-EU companies generating over €150 million per year in the EU and having in the EU either a branch with a turnover exceeding €40 million or a subsidiary that is a large company or a listed SME will be required to report on the sustainability impacts at the group level of that non-EU company, starting from the financial year 2028, with the first sustainability statement published in 2029.

Relevance to EU and Non-EU Companies:

- EU companies obligated to report starting from the financial year 2024 onwards will soon need to adopt these newly proposed standards.
- For companies based in third countries, reporting obligations, via their EU subsidiaries or branches, will commence as early as the financial year 2025 (or 2024 if previously subject to the NFRD) if they have a subsidiary or branch within the EU territory that is publicly listed.
- For third-country companies, reporting obligations will commence in the year 2029 for the financial years starting in 2028. In this case, it should also be noted that new standards will be introduced, in due course, for reporting the relevant information.



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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