

Sustainability Outlook European Union

March 2022



EU adopts Environmental Action Programme until 2030.

The European Parliament [adopted](#) a [resolution](#) confirming a provisional agreement reached with the Council at the end of 2021 on the 8th Environmental Action Programme (EAP; see [Sustainability Outlook December 2021](#)). Following that, the Council formally [adopted](#) the [Decision on the 8th EAP](#). The 8th EAP supports and guides the EU environmental policy until 2030 and aligns it with the objectives of the [European Green Deal](#). The co-legislators agreed on several enabling conditions for achieving the objectives of the programme.

Broadly in keeping with the Commission's proposal from October 2020, the **priority objectives** of the EAP are:

- (1) Climate change mitigation to attain the 2030 greenhouse gas (GHG) emission reduction target
- (2) Climate change adaptation
- (3) Accelerating the transition to a non-toxic circular economy
- (4) Pursuing zero-pollution (including in relation to harmful chemicals)
- (5) Protecting, preserving and restoring biodiversity
- (6) Reducing environmental and climate pressures related to the EU's production and consumption

The EAP establishes a **monitoring framework** to measure the progress regarding these priorities, as well as a **governance mechanism** to ensure their attainment. The Commission must **monitor**, assess and report annually on the progress made by the EU and Member States. In addition, it must develop a **summary dashboard** and indicator set measuring social, economic and environmental **progress "beyond GDP"**. By March 2024, the Commission must carry out a **mid-term review** of the progress achieved, as well as the progress made towards monitoring and assessing systemic change. If necessary to reach the objectives by 2030, the Commission is tasked with tabling a legislative proposal with additional initiatives.

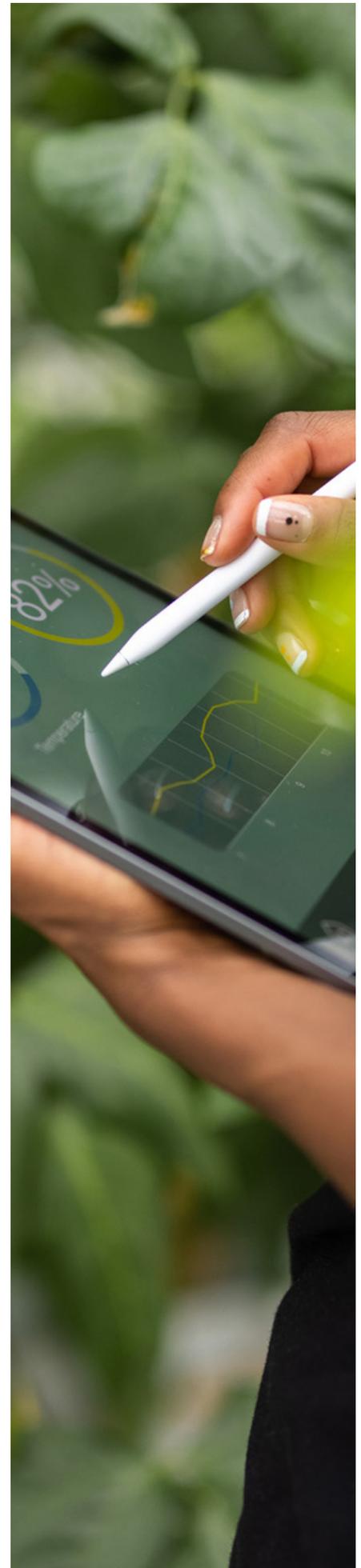
The EAP foresees the phasing out of environmental harmful (**fossil fuel**) **subsidies**. The EU will set up a **binding framework** to **monitor and report** on Member States' **progress towards their phasing out** and set a **deadline** consistent with the ambition of limiting global warming to 1.5°C. By 2023, the Commission, in consultation with Member States, must set a **methodology to identify other environmentally harmful subsidies**.

The EAP will be published in the Official Journal of the EU and will enter into force as a legally binding decision.

European Commission details its environmental policy work for 2022.

The Commission [made available](#) its 2022 management plans, including for the Directorate-General for the Environment (DG ENV). In 2022, DG ENV plans to deliver **24 major initiatives**, of which 15 are legislative, while another three to five future legislative proposals will still be under development at the end of the year. The overall Commission Work Programme 2022 already included most of these initiatives (see [Sustainability Outlook October 2021](#)). Others are the **Sustainable Products Policy Framework** and the **Textiles Strategy**, which the Commission has just presented (please see below), as well as the revisions of **Packaging and Packaging Waste Directive 94/62** (expected in Q3 2022) and the **Mercury Regulation 2017/852** (expected in Q4, see [Sustainability Outlook February 2022](#)). As examples of non-legislative initiatives, the Commission intends to adopt the **guidelines** for extended producer responsibility (EPR) criteria on the costs of **cleaning up litter** (as provided by [Single-use Plastics Directive 2019/904](#)) in Q4, and to conduct a public consultation on the review of Waste Framework Directive 2008/98 in Q2 (see [Sustainability Outlook January 2022](#)).

Based on the Commission Work Programme, the annual management plans of the Commission departments set out the main activities for the year ahead and explain how these will contribute to their strategic objectives.





European Parliament committee agrees with extension of ETS market stability reserve rules.

The European Parliament's Committee on Environment, Public Health and Food Safety (ENVI) adopted a [report](#) on the [proposal](#) tabled by the European Commission in July 2021 on a decision regarding the **amount of allowances to be placed in the market stability reserve (MSR)** for the greenhouse gas (GHG) emission trading scheme (ETS) until 2030. The position of the Committee is aligned with the Commission's proposal in that the rate of intake into the MSR should remain at **24% of the annual surplus of emissions allowances circulating on the market until 2030**.

The Commission established the MSR in 2018 as a long-term solution. It has been operational since 2019. The Commission also adjusted the rules for placing allowances in the reserve and releasing them from it temporarily until 2023 through Directive 2018/410 to enhance cost-effective emission reductions and low-carbon investments. It doubled the percentage from the total number of allowances in circulation (the intake rate), which is reserved from 12% to 24%, and the minimum amount to be placed in the reserve from 100 to 200 million allowances. The aim of adjusting rules on MSR was to address the surplus of allowances and to improve the resilience of the ETS to major shocks.

The stated objective of the Commission's proposal is to **extend this temporary adjustment beyond 2023**, to **avoid a harmful increase in the surplus of emission allowances**, which would run counter to the increased ambition in the [European Green Deal](#) and EU Climate law (please see [Sustainability Outlook June 2021](#)).

On the broader **revision of the ETS Directive 2003/87** itself (please see [Sustainability Outlook July 2021](#), [Sustainability Outlook January 2022](#), and [Sustainability Outlook February 2022](#)), ENVI will vote on the [draft report](#) and amendments to it in May. On that basis, the plenary is expected to adopt the Parliament's negotiating position in Q3 2022. Meanwhile, the **Environment Council** continued to discuss the Commission's proposal. Regarding in particular the **extension of the ETS to buildings and roads**, the Presidency of the Council [noted](#) significant differences in opinion among the Member States and that the related social, economic and financial issues had a strong political dimension. Several delegations had expressed opposition or reservations, mainly for reasons of social acceptability, in particular for households. However, most delegations acknowledged the reality of the problem of increasing emissions in the road transport and buildings sectors.

European Parliament proposes central CBAM authority to supervise carbon leakage system.

The European Parliament's Committee on Environment, Public Health and Food Safety (ENVI) discussed [amendments](#) to the [Commission's proposal on a Carbon Border Adjustment Mechanism \(CBAM\)](#); please see [Sustainability Outlook June 2021](#) and [Sustainability Outlook July 2021](#)). Among other things, they foresee the introduction of a CBAM Authority, in order to encourage cooperation between Member States' national authorities and to ensure consistent application. That CBAM Authority and customs authorities should supervise the CBAM to prevent, identify and sanction any type of abuse or fraud.

On the **link between the ETS system and the CBAM**, the amendments propose an assessment of carbon leakage to be carried out by the Commission. In particular, the CBAM should be progressively phased in while free allowances in sectors covered by the CBAM are phased out (only) after an **assessment by the Commission** has proven that the CBAM is effective in **protecting energy-intensive sectors from the risk of carbon leakage regarding both imports and exports**, to ensure a just transition. ENVI plans to vote on the draft report and amendments to it in May.

Meanwhile, the **Council** adopted a [General Approach](#) as its negotiating position. It confirms most of the elements of the Commission's proposal, including the **introduction of the CBAM in 2026**. **Other issues, including the phase-out of free allocations** under the EU ETS, would be **postponed** to separate negotiations over other legislative files in the Fit for 55 Package. The Council's position would maintain the list of sectors – including cement, aluminium, fertilisers, electric energy production, iron and steel – initially proposed by the Commission, albeit with some **new sub-sectors**.

European Commission proposes broad Ecodesign framework for products.

The Commission adopted the Sustainable Products Initiative (SPI), which it had announced in the [new Circular Economy Action Plan](#) (CEAP 2.0). It aims at reducing the negative life cycle environmental impacts of products, while benefitting from efficient digital solutions, by setting a **framework for ecodesign requirements**, creating an **EU digital product passport** and **tackling the destruction of unsold consumer products**. The Commission had delayed the proposal multiple times (see [frESH Law Horizons March 2021](#)).

In particular, the SPI includes the [proposal for an Ecodesign for Sustainable Products Regulation](#) (ESPR), which repeals the current Ecodesign Directive 2009/125. It establishes a horizontal framework and broadens the scope of the Ecodesign Directive. It **applies to all products**, except food, feed, medicinal and veterinary products, living plants and animals and products of human origin. According to the Commission's explanatory memorandum, the ESPR is meant to address products that are not covered by existing legislation or where that legislation does not sufficiently address sustainability. Ecodesign requirements in delegated acts could not supersede requirements set through legislative acts (of the Council and European Parliament).

The proposed regulation provides a **framework for** the Commission to adopt **delegated acts with specific rules for a product or group of products**, following the approach of the current Ecodesign Directive. It tasks the Commission with adopting a **Working Plan** with a list of products, for which it plans to adopt delegated acts, covering at least three years, thus providing **some predictability**. The Commission [stated](#) that it has preliminarily identified textiles, furniture, mattresses, tyres, detergents, paints, lubricants and intermediate products like iron, steel or aluminium as products that may be suitable candidates. It expects to prepare and adopt up to 18 new delegated acts between 2024 and 2027 and 12 new delegated acts between 2028 and 2030.





Delegated acts will provide for each product group:

- **Performance requirements** regarding sustainability aspects, such as product durability, reliability, **reusability**, upgradability, reparability, maintenance and refurbishment, energy and resource, **recycled content**, **remanufacturing and recycling** carbon and environmental footprint, expected generation of waste and presence of **substances of concern**.
- **Information requirements** for all these sustainability aspects. Delegated acts must include requirements that will enable the **tracking of all substances of concern** throughout the life cycle of products, unless such tracking is already enabled by another delegated act under the ESPR. The delegated acts will also determine the modalities for making the required information available: on the product, its packaging, labels, in a user manual, on a website or in the **digital product passport (DPP)**. They must ensure that actors along the value chain (consumers, economic operators and competent national authorities) can access product information relevant to them, improve traceability of products along the value chain, and facilitate the verification of product compliance by competent national authorities. They must also indicate the type of data carrier to be used and how long the DPP must be available.

The DPP should not replace but complement non-digital forms of transmitting information. The Commission may exempt products from the requirement to have a DPP, in particular where other EU law includes a system for the digital provision of information.

The regulation proposes to define **substances of concern** as substances that (a) meet the criteria for and have been identified as substances of very high concern (SVHC); (b) whose classification is harmonised under the CLP Regulation regarding specific hazard classes; or (c) **negatively affects the reuse and recycling of materials** in the product.

The ESPR proposal allows the Commission to recognise **industry-designed self-regulation** as an alternative to delegated acts, under certain conditions.

Under the proposed ESPR, economic operators **discarding unsold consumer products** will have a general transparency obligation to disclose their number of such products per year, the reasons for the discarding and information on the amount of discarded products that they have delivered to preparation for re-use, remanufacturing, recycling, energy recovery and disposal. Small and medium-sized companies are exempted from this obligation. The **Commission is empowered to prohibit the destruction of certain unsold products** through delegated acts.

The proposal will be sent to the Council and European Parliament for amendment and adoption, following the ordinary legislative procedure.

The Commission said that in parallel, it will launch a public consultation on the categories of products to be selected under the first Working Plan under the new ESPR by the end of 2022. Under the hitherto law, the Commission has developed EU ecodesign requirements for [31 energy-using product groups](#). At the same as it proposed the new ESPR, the Commission adopted an [Ecodesign and Energy Labelling Working Plan 2022-2024](#) based on the current law to cover additional energy-related products, and update and increase the ambition for products that are already regulated within that timeframe.

European Commission presents new Textiles Strategy to tackle fast fashion and textile waste.

The Commission [published](#) a communication on the [EU Strategy for Sustainable and Circular Textiles](#), accompanied by a Staff Working Document on “[Scenarios towards co-creation of a transition pathway for a more resilient, sustainable and digital textiles ecosystem](#)”.

The Textiles Strategy sets out concrete actions to ensure that by 2030, textile products placed on the EU market are **long-lived and recyclable**, to a great extent made of **recycled fibres**, free of hazardous **substances** and produced in respect of **social rights** and the **environment**. The specific measures include the development of **mandatory ecodesign requirements, transparency obligations** regarding discarded products, **digital product passports (DPP)** and other **information requirements**, as well as the establishment of **harmonised extended producer responsibility (EPR)** rules with eco-modulated fees. These are fees that in principle cover the cost of managing textile product waste, but are increased or decreased depending on certain ecological criteria, e.g. recyclability. The Commission has already included or will include some of these measures in other proposals, such as the revision of Textile Labeling Regulation 1007/2011 and of Waste Framework Directive 2008/98 in 2023 (please see [Sustainability Outlook January 2022](#)), a possible regulation to tackle the unintentional release of microplastics in the environment from textiles (please see [Sustainability Outlook February 2022](#)), and an upcoming legislative proposal on green claims (e.g. regarding recycled plastic polymers in apparel). The Commission has also launched a dedicated study with a view to proposing **mandatory targets** for the (preparing for) re-use and **recycling** of textile waste, as well as a collaborative tool to “co-create” a [transition pathway for the textiles ecosystem](#).

The Commission will [consult interested stakeholders](#) on the Staff Working document until 15 May.





European Commission proposes rules to ban greenwashing.

The Commission [proposed a directive empowering consumers for the green transition](#). It amends the Consumers Rights Directive 2011/83 (CRD) and Unfair Commercial Practices Directive 2005/29 (UCPD) and imposes product information obligations on traders addressing “greenwashing” and early obsolescence practices. Traders must provide consumers in a **clear and comprehensive manner**, information on the **durability** of the products, the **repairability** score of the goods and other information, such as information on the availability of spare parts and a repair manual. For goods with digital elements, digital content and digital services, they must inform consumers on the existence and length of period during which the producer commits to providing **software updates**. Traders must convey to consumers the information that the producer has provided – on the product itself, its packaging or tags and labels.

The proposal extends the list of **product characteristics** in the UCPD about which a trader should not deceive a consumer to environmental or social impact, durability and reparability. It adds new **commercial practices** that are considered misleading (under certain established conditions):

- Making an environmental claim related to **future environmental performance** without clear, objective and verifiable commitments and targets and an independent monitoring system. The amended directive provides a broad definition of environmental claim, including text, pictorial, graphic or symbolic representation.
- Advertising benefits for consumers that are considered as a common practice in the relevant market.

In addition, it adds 10 **commercial practices**, which are to be considered **unfair in all circumstances**, such as displaying a **sustainability label** that is **not based on a certification**, making generic environmental claims about the entire product when it actually concerns only a certain aspect of the product and presenting requirements imposed by law as a distinctive feature.

The proposal is complemented by other initiatives, including on the Right to Repair (currently open for consultation, see [Sustainability Outlook January 2022](#)), and the upcoming proposal on Substantiating Green Claims, which the Commission has delayed to July 2022. It aims at regulating environmental claims with the Product/Organisation Environmental Footprint (PEF/OEF) methods, to make them reliable, comparable and verifiable, reducing “greenwashing”.

The Council and European Parliament will amend and adopt this proposal following the ordinary legislative procedure. Once adopted, Member States will have 18 months to transpose it to national law, with its rules applying two years after its formal adoption.

European Commission puts new rules on recycled plastic food contact materials to a vote.

The Commission presented revised drafts of the regulation on recycled plastic food contact materials (FCM) and articles, to Member States representatives in its Standing Committee on Plants, Animals, Food and Feed (SCoPAFF), [most recently on 29 March](#). It has amended the draft that it published last year (see [Sustainability Outlook December 2021](#)) and on which it [consulted](#) stakeholders.

The new regulation will repeal Regulation 282/2008. For the notification of the so-called **novel technologies**, the new regime foresees an **elaborate notification procedure and reporting requirements**. According to the latest drafts, that notification must include detailed information concerning, among others, extensive reasoning, scientific evidence and studies demonstrating that the novel technology can manufacture recycled plastic materials and articles that meet the **general safety** requirements for FCM and also ensures their **microbiological safety**. The data used to determine the decontamination efficiency must be obtained either by the operation of a pilot installation, or originate from commercial production. Where needed to fully establish the safety of the plastic FCM and articles, it must be complemented by tests. Competent (national) authorities must verify within five months from the notification whether the developer has met the requirements for a notification.

Following the stakeholder consultation, the Commission has reasoned that, unlike other novel technologies, the main principles of the use of recycled plastic **behind a functional barrier** are already understood, and that several hundred recycling installations already manufacture recycled FCM and articles with this technology. Consequently, it added to its latest drafts specific provisions, which will apply to installations that have produced these plastics before the entry into force of the new regulation, and until the Commission has taken a decision on the suitability of this technology. In particular, the developer must verify the effectiveness of the barrier principle through migration **tests**, challenge tests, and/or migration modelling. On the other hand, these specific provisions allow recyclers operating decontamination installations notified by the same developer to **monitor** the decontamination levels **in only a third of the installations**.

Food business operators may use recycled plastics and articles legally placed on the market to pack food and place it on the market until the exhaustion of their stocks.

The SCoPAFF [has already discussed the drafts](#) during multiple meetings, [most recently on 24 March](#). It will vote on the draft until 4 April. If approved by the Committee, the Council and European Parliament will scrutinise it for up to three months. After that, **the Commission plans to adopt its regulation during this summer**.

European Commission opens feedback period for rules on supply chain due diligence.

The Commission opened an eight-week [feedback period](#) on the proposal for a [Directive on Corporate Sustainability Due Diligence](#) that it presented last month (please see [Sustainability Outlook February 2022](#)). The proposal's main objective is to improve the corporate governance and practices and increase corporate accountability by introducing a set of tools and procedures that would contribute to prevent and remedy human rights violation, as well as environmental damage. The feedback period ends on 23 May.





EU legislators to start negotiations on the new rules on batteries.

Members of the European Parliament [finalised](#) their position on the proposal for a Batteries Regulation, following the adoption of the report by the responsible committee (please see [Sustainability Outlook January 2022](#), [Sustainability Outlook February 2022](#)). The Parliament confirmed the definition of a separate category of batteries for **light means of transport**, as well as 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.

On **recycled content**, the Commission proposal provided for recycled content minimum thresholds for batteries that contain cobalt, lead, lithium or nickel in active materials, increasing from 2030 to 2035. It also foresees a requirement for industrial, electric vehicle and automotive batteries with internal storage and a capacity above 2kWh to be accompanied by **technical documentation** reporting on amount of cobalt, lead, lithium or nickel recovered from waste present in active materials in each **battery model and batch per manufacturing plant**. The **European Parliament wants to extend this requirement** to portable batteries, with the exception of portable batteries for general use and light means of transport. Each **battery model per manufacturing plant** would need to be accompanied by technical documentation from 1 July 2025 removing the reference to batches).

The **Council**, as the other EU co-legislator, also adopted its negotiating position in a so-called [General Approach](#). It **agrees with the separate definition of “light means of transport battery”** proposed by the Parliament. Such definition would cover any battery that is sealed and weights below or equal to 25kg, designed to provide traction to wheeled vehicles that can be powered by the electric motor alone or by a combination of motor and human power, and that is not an electric vehicle battery. The definition would encompass type-approved vehicles of category L within the meaning of Regulation 168/2013.

On recycled content, the Council proposes that the requirement on technical documentation enters into force **either 60 months after entry into force of the Regulation or 24 months after the entry into force of a delegated act** on the methodology of calculation and verification of recycled content, which the Commission should adopt within 36 months after entry into force of the Regulation. In contrast to the Commission proposal, the requirement would apply to industrial batteries with a capacity above 2kWh, except those with exclusively external storage, and to starting, lighting and ignition (SLI) batteries. Documentation should provide information on the share of recovered materials, including lead, for **each battery model per year and per manufacturing plant**.

Now that both the European Parliament and the Council have adopted their negotiating positions, inter-institutional negotiation between the co-legislators (trilogues) are expected to start with a view to agreeing on the final text of the regulation.

European Commission Platform on Sustainable Finance recommends further taxonomy criteria.

Finalising draft recommendations from last year (see [Sustainability Outlook August 2021](#)), the [report](#) and its [Annex](#) present technical screening criteria (TSC) for a set of economic activities with regard to their substantial contribution to four environmental objectives: (1) sustainable use and protection of water and marine resources; (2) **transition to a circular economy**; (3) pollution prevention and control; and (4) protection and restoration of biodiversity and ecosystems, as well as the criteria for “**do no significant harm**” (DNSH). The Commission may consider those recommendations when drafting the delegated act on these four environmental objectives. According to Taxonomy Regulation 2020/852, the Commission must adopt the delegated act before the end of 2022 to ensure its application from January 2023. Currently, the Climate Delegated Act (setting TSC for activities with regard to their substantial contribution to climate change adaptation and mitigation) has applied since the beginning of the year (see [Sustainability Outlook January 2022](#)).

Council and Parliament Committee fix their positions on 'most harmful' chemicals in waste.

Each EU co-legislator has been working on its position on the proposed revision of **Persistent Organic Pollutants (POPs)** Regulation 2019/1021. It updates the concentration limits in Annexes IV and V, which determine how waste containing POPs must be treated. The Commission presented its proposal last year (see [Sustainability Outlook November 2021](#)).

The EU environment ministers [endorsed](#) the Council negotiation [mandate](#), which was formally approved by the Permanent Representatives Committee. The Council proposes limit values for dioxins and furans (**PCDD/PCDF**) at 10µg/kg (from 5µg/kg of the Commission proposal). It proposes to apply those limits in 2025 with regard to ashes and soot from private households, maintaining them at 15µg/kg until December 2024. Concerning polybrominated diphenyl ethers (**PBDEs**), the Council agrees with the Commission proposal to set the concentration limit for the sum of those substances in waste at 500mg/kg, but tasks the Commission with reviewing these limits within seven years (instead of five). It also wants to keep the limit for hexabromocyclododecane (**HBCDD**) as proposed at 500mg/kg but deletes the mandate to lower them to 100mg/kg no later than five years after the entry into force of the regulation.

The Committee on the Environment, Public Health and Food Safety of the European Parliament (ENVI) [adopted](#) its report by a wide majority, accepting the [compromise amendments](#) agreed upon by the five major political groups. It wants to task the Commission with assessing **whether it would be appropriate to amend** Waste Framework Directive 2008/98 and/or the List of Waste (Commission Decision 2014/955), to recognise that **waste containing POPs exceeding the concentration limits in Annex IV must be classified as hazardous**. ENVI wants to lower all the concentration limits proposed by the Commission in Annex IV:

- Perfluorooctanoic acid (**PFOA**) and its salts, from 1mg/kg to 0.1mg/kg.
- Sum of PFOA-related compounds lowered from 40mg/kg to 20mg/kg.
- Alkanes C10-C13, chloro (short-chain chlorinated paraffins; **SCCPs**), from 1500mg/kg to 420mg/kg.
- **PBDEs** (cumulative threshold for five substances) from 500mg/kg to 200mg/kg. It mandates the Commission to review those values no later than five years after the entry into force.
- Polychlorinated dibenzo-p-dioxins and dibenzofurans (**PCDD/PCDF**), and dioxin-like polychlorinated biphenyls (dlPCBs), from 5µg/kg to 1µg/kg.
- **HBCDD** from 500mg/kg to 200mg/kg, with a mandate for the Commission to assess lowering this limit to 100mg/kg no later than five years after the entry into force of the regulation.

It also proposes to include perfluorohexane sulfonic acid (**PFHxS**), its salts and compounds, in order to anticipate the decision of their listing in the UN Stockholm Convention, scheduled for June 2022.

The Parliament will vote on the report at the plenary session in May. Afterwards, both co-legislators will negotiate the final text.





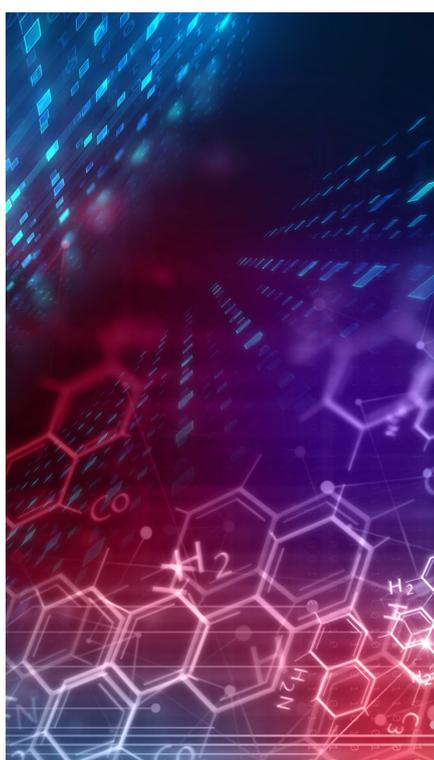
European Commission report considers measures to phase-out PVC.

In February, the Commission published the final report "[The use of PVC \(Poly Vinyl Chloride\) in the context of a non-toxic environment](#)", drafted by consultant Ramboll. It considers PVC highly relevant in the context of several different EU policy initiatives in the framework of the [European Green New Deal](#), in particular the new [Circular Economy Action Plan \(CEAP 2.0\)](#), the [Chemical Strategy for Sustainability \(CSS\)](#), and the Zero Pollution Action Plan (please see [Sustainability Outlook June 2021](#)). It observes that it can be concluded from literature that the vast majority of PVC additives are not covalently bound to the polymer and, as such, can migrate out of the polymer matrix. The report lists several factors that can cause migration, and notes that specific data about the **migration potential** and rates for many additives in PVC is scarce. Yet, PVC mixtures seemed to be currently commonly classified as non-hazardous, based on the argument that the additives are bound in the polymer matrix, do not migrate and hence are not bioavailable. From a precautionary perspective, a **more critical assessment of the classification of PVC mixtures as hazardous or non-hazardous might be necessary**.

Furthermore, the report considers the **end-of-life** phase of PVC. Also in this context, further assessment of the classification of PVC as hazardous or non-hazardous might be necessary for the determination of the most suitable disposal route, as there is not much data on the fate of PVC present in waste streams and the quantities directed towards different types of incineration or landfill.

The report states that **alternatives to PVC** are already available (both plastic and non-plastic materials, as well as some more novel options like bioplastics) and outlines **different possible scenarios** with respect to **the phase-out of PVC** through **regulatory or voluntary** action. Regulatory action includes **REACH restrictions**, either targeting specific risks or specific applications or **all applications**. Voluntary phase-out programmes agreed with industry could potentially cover recycling targets, removal of further additives and phase-out of specific applications.

In [response to a parliamentary question](#) on the report, the Commission confirmed that it is considering giving a mandate to the European Chemicals Agency (ECHA) to investigate the risks posed by PVC and its additives, and understand whether further action under REACH is needed. It pointed out that REACH does not provide for a stakeholders consultation before it gives such a mandate.



European Commission discusses stepwise approach to essential uses of chemicals.

Consultancy Wood organised a [stakeholder workshop](#) on the essential use concept under REACH for the Commission. It aimed at consulting stakeholders on how the concept can be put into operation under REACH and other relevant chemicals legislation such as for food contact materials (FCMs), cosmetics and toys. The Commission announced in the [Chemical Strategy for Sustainability \(CSS\)](#) that it planned to define **criteria for essential uses** to ensure that the most harmful chemicals are only allowed if their use is necessary for health, safety, or is critical for the functioning of society, and if there are no alternatives that are acceptable from the standpoint of environment and health. In a background document for the workshop, Wood observed that the most important aspect for discussion is how the criteria and their individual elements should be applied, including possible options for simplification. One such option was to consider **screening steps** as regards **available alternatives** and **criticality of the use** for the functioning of society or its necessity for health and safety. These screening steps could be taken in parallel for both elements of the criteria, first for criticality/necessity, or first for the availability of alternatives. After this first initial screening, a further **scientific/technical assessment** would follow where necessary, before deciding on the authorisation or derogation.

[Reportedly](#), industry players that took part in the workshop have been very vocal in advocating for "safe use" to be considered in screenings alongside essentiality, in line with recent proposals from the associations, Cefic and Eurometaux.

European Commission considers requiring environmental footprint information in REACH.

In its [Chemical Strategy for Sustainability \(CSS\)](#), the Commission planned to assess how to best introduce information requirements under REACH on the overall environmental footprint of chemicals, including on emissions of greenhouse gases (GHG). In a [document](#) submitted to the Competent Authorities for REACH and CLP (CARACAL), the Commission now proposed different “high-level policy options” to address environmental footprint information:

- **Development of harmonised templates and guidance documents** that REACH registrants may use for providing information on the environmental footprint of their substances (to the extent that such information is requested by their customers).
- **Mandatory requirements for providing information** on this (which would require a revision of REACH).
- A **new piece of legislation** requiring mandatory reporting of information on the environmental footprint of substances.

Among other things, the Commission asked CARACAL whether providing environmental footprint information should be **voluntary or mandatory** for registrants. It observed that the implementation of the European Green Deal and the various initiatives under it all add to the **increasing need for robust data on the environmental performance** of chemical substances that can feed into assessments regarding their impact on climate change, biodiversity, ozone depletion, etc. Thus, innovators and downstream users (including formulators of mixtures and producers of articles) would increasingly need and request robust and high-quality information on substances registered under REACH for their future assessments of the sustainability of their materials, products and services.

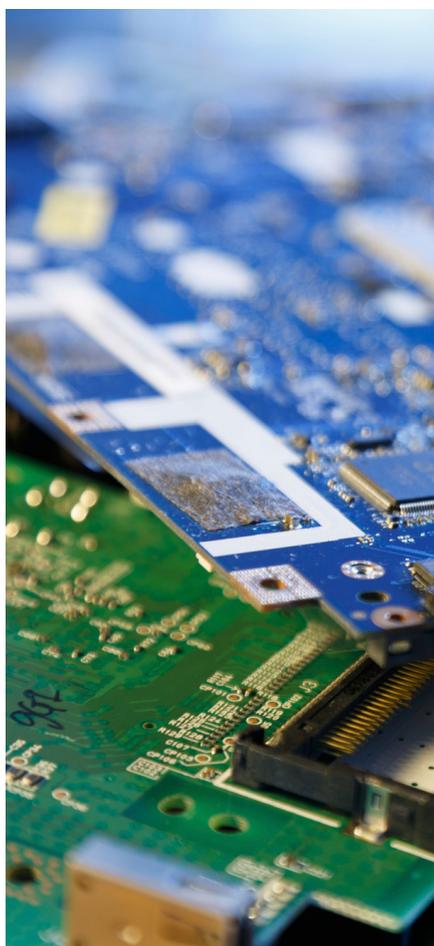
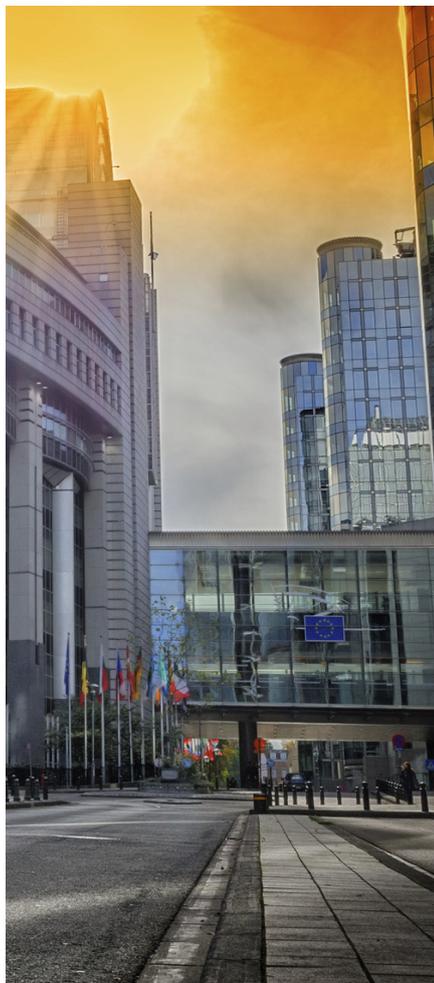
European Commission finds lack of evidence to exclude polyesters from REACH registration.

In a [note](#) submitted to the Competent Authorities for REACH and CLP (CARACAL) in preparation for a meeting held in February, the Commission explained that it has reviewed the available scientific evidence and literature to support findings on the US, Canadian and Australian lists of allowed polyesters. It found that **scientific evidence for exempting them from registration under REACH is still incomplete.**

This review followed a request from CARACAL’s subgroup on polymers. The Commission had previously suggested that companies would not need to register approved polyesters. In 2021, it [suggested](#) in an informal proposal for an EU-definition of polymers of low concern (PLC) to refer to the **approved polyesters lists** originally developed by the US Environmental Protection Agency (EPA).

However, based on the available information in the non-EU lists, the Commission now concluded that evidence seems incomplete and **some of the substances currently included in the exemption lists may be of concern**, including cyclic polyesters, long chain aromatic polyesters, polycyclic aromatic structures and phenylic polyesters with silsesquioxanes. The note also points to the fact that the lists in other jurisdictions are not fully harmonised.





European Commission seeks comments on rules on detergents.

The Commission [launched](#) a public consultation on the revision of the Detergents Regulation 648/2004. The revision focuses on **reducing administrative burdens**, ensuring **consistency with other relevant legislation** and **adapting legislation on detergents to technical progress**. In the Commission's view, a number of **weaknesses** and aspects can be further **improved** both in the Regulation itself and in the overall regulatory framework that applies to detergents. This includes some new developments and marketing trends in the single market that the Regulation does not account for (e.g. microbial cleaning products and refill sale of detergents), overlaps in the information requirements for detergents such as duplications in the labelling requirements, and the presence of some potentially harmful ingredients in detergents, e.g. phosphorus in professional detergents. The questionnaire will be open until 25 May. The Commission plans to adopt the initiative in Q4 2022.

European Commissions seeks comments on rules on toys.

The Commission [is consulting](#) on its plans to revise the **Toy Safety Directive 2009/48**. The initiative aims in particular at protecting children against risks in toys, particularly from chemicals. It builds on work such as the [Chemical Strategy for Sustainability \(CSS\)](#), and on an evaluation of the current toy safety rules, which the Commission completed in 2020. According to the Commission, that evaluation identified several shortcomings, in particular concerning **chemical risks**. Under the Classification, Labelling and Packaging **(CLP) Regulation 1272/2008**, **substances and mixtures are classified as hazardous**. The **Toy Safety Directive** generally **bans** substances that are classified as carcinogenic, mutagenic or toxic for reproduction **(CMR)** under the CLP Regulation in toys, with only a few derogations. Substances under other hazardous classifications in the CLP Regulation are not currently covered by the general bans in the Directive.

The consultation will be open until 25 May. The Commission plans to adopt the initiative in Q4 2022.

European Commission seeks comments on rules on hazardous substances in electronics.

The Commission launched a [public consultation](#) on its plan to revise Directive 2011/65 on the restriction of the use of certain hazardous substances in electrical and electronic equipment **(RoHS)**. It seeks views on how the RoHS Directive could be improved in order to **maintain its relevance and increase its efficiency**. The evaluation of the RoHS Directive identified potential areas for improvement: the **exemption process**, the process of **reviewing the list of restricted substances** and the **alignment of RoHS with other EU legislative frameworks**. These other EU legislative frameworks include REACH Regulation 1907/2006, the [European Green Deal](#), and, in particular, the new Circular Economy Action Plan [\(CEAP 2.0\)](#), the [Chemical Strategy for Sustainability \(CSS\)](#), the Zero Pollution Action Plan (please see [frESH Law Horizons May 2021](#)), and the Sustainable Products Initiative (please see above). The consultation considers the impact if the Directive was **turned into a directly applicable regulation**.

An entire section of the consultation is dedicated to **exemptions**. According to the Commission, the evaluation report of the RoHS Directive highlighted that the time required to evaluate and grant an exemption has increased from 12-18 months in 2006 to three years or more (up to 40 months). Due to the very large amount of renewal applications received, the expected timeframe for the Commission to take a decision on a RoHS exemption application was currently approximately at 18-24 months. This might be perceived as an advantage for manufacturers of equipment using an existing exemption, and as a disadvantage for those actors applying for a new exemption. Member State authorities, business associations and NGOs had overall agreed that the **process of handling exemptions is slow**.

The consultation will be open until 2 June 2022. The Commission plans to adopt its proposal in Q4 2022.

EU strengthens protection of workers from dangerous chemicals.

Following the European Parliament's endorsement in February of the provisional agreement reached in legislative negotiations (trilogues), the Council [adopted](#) the [fourth revision](#) of the Carcinogens and Mutagens Directive 2004/37 (CMD). It will amend its scope to include **reprotoxic substances and hazardous medicinal products (HMPs)**. This revision will transfer limit values for 12 reprotoxic substances – currently dealt with under the Chemical Agents at Work Directive 98/24 (CAD) to the stricter CMD and add or amend occupational exposure limits (OELs) for acrylonitrile, nickel compounds and benzene. Consequently, the CMD will be renamed as **Carcinogens, Mutagens and Reprotoxic Substances Directive (CMRD)**. In the Council's view, the revision will improve protection of workers, of which more than one million are exposed to acrylonitrile and nickel compounds and benzene.

European Commission launches initiative to streamline work among chemical agencies.

The Commission opened a [call for evidence](#) on an upcoming regulation to streamline EU-level scientific and technical work on chemicals by making best use of the relevant EU agencies. The agencies involved are the European Chemicals Agency (**ECHA**), the European Food Safety Authority (**EFSA**), the European Environment Agency (**EEA**) and the European Medicines Agency (**EMA**). The initiative aims at simplifying the current arrangements for assessments, improving the quality and consistency of safety assessments across legislation and ensuring that resources are used more efficiently overall. The Commission refers to the [fitness check of all chemicals legislation, which](#) it concluded in 2019. It had shown that there were significant opportunities for streamlining the technical and scientific work. Furthermore, the [Chemical Strategy for Sustainability](#) (CSS) had identified a reattribution of that work as one of its key actions. The Commission intends to include several aspects of technical work in the regulation, such as assessments of risk from hazard and exposure to chemicals; determination of safe levels for chemicals; and development of guidance documents. The initiative will also look into managing scientific committees and expert groups; collecting, hosting and processing data on chemicals (including on hazard, occurrence and emissions); hosting and operating information platforms; and managing data flows on chemicals and defining data formats. According to the Commission, there is **no** need for an **impact assessment** as there is **little discretion on the policy choices** and **no significant economic, social or environment impact is expected**. The Commission will not conduct an open public consultation, due to the technical nature of the changes. Comments on the call for evidence can be submitted until 12 April 2022. The Commission plans to propose the regulation in Q4 2022.





EU Court confirms identification of GenX as substances of very high concern.

The General Court rejected an action brought by Chemours Netherlands against [the decision of the European Chemicals Agency](#) (ECHA) to identify **hexafluoropropylene oxide dimer acid (HFPO-DA)** and its ammonium salt as substances of very high concern (**SVHCs**) under REACH due to their environmental persistence and mobility (Case [T-636/19](#)). These substances are commonly referred to as **GenX**, the name of the technology in which they are used. They are part of the broader category of per- and polyfluoroalkyl substances (**PFAS**), which (intended) restriction proposals by ECHA and five national competent authorities address (please see [Sustainability Outlook January 2022](#) and [Sustainability Outlook July 2021](#)).

The Court rejected Chemours' arguments that ECHA had exceeded its competence under REACH, in particular regarding the identification as SVHC of substances for which there is scientific evidence of probable serious effects to human health or the environment which give rise to an **equivalent level of concern** to carcinogenic, mutagenic reprotoxic (CMR), persistent, bioaccumulative and toxic (PBT), as well as very persistent and very bioaccumulative (vPvB) substances. In particular, the Court found that the data on rats on which ECHA based its conclusion on developmental toxicity were accurate. The Court also rejected the argument that ECHA's decision was **disproportional** as there were already stringent risk-management measures in place, emissions were minimised and the absence of any commercially viable alternatives to HFPO-DA hindered the authorisation process. The Court held that ECHA's decision has no immediate bearing on the use of HFPO-DA and its presence in the environment and that a substance is identified as SVHC solely on account of the hazards arising from its intrinsic properties.

UK government consults on environmental targets for England.

UK Environment Act 2021 empowers government to set binding targets on environmental protection and requires the Department for Environment, Food and Rural Affairs (DEFRA) to set at least one long-term target (≥ 15 years) in each of **four priority areas: air quality, water, biodiversity, as well as resource efficiency and waste reduction**. It also requires the setting of species abundance targets for December 2030 and a shorter-term legally binding target to reduce PM2.5 in ambient air. Draft legislation is required to be laid for these targets by October 2022. This is the [first consultation](#) towards that deadline. The proposed PM2.5 target is in two parts, of which one is an annual mean concentration target of 10 micrograms per cubic metre ($\mu\text{g m}^{-3}$) across England by 2040 (the other part of the target is a population exposure reduction target of 35% reduction in population exposure by 2040, compared to 2018). Notably the 10 microgram target reflects the previous World Health Organization (WHO) target, but this was updated in 2021 to 5 micrograms. In this respect, and others, the proposals have come in for criticism as not being ambitious enough. The consultation is open until 11 May 2022.

DEFRA also published a [nature recovery green paper](#), intended to support achievement of the species abundance target.

UK government updates proposals on extended producer responsibility (EPR) for packaging.

DEFRA and the devolved administrations published the [response to the second consultation on EPR for packaging](#). Under EPR, packaging producers should be responsible for the full end of life costs of the packaging that they place on the market, and the fees paid by producers should be subject to 'eco-modulation', meaning that producers of less recyclable packaging should pay more. Under the EU law, eco-modulation is supposed to apply the latest from 2023, but the UK is no longer required to meet this timetable. The response confirms that the UK intends to **phase-in EPR starting in 2024**, not 2023. **Eco-modulation will not apply until 2025**. The EPR scheme will also **initially** only include household packaging waste and packaging in street bins of local authorities, so it will **exclude commercial packaging**, which will remain subject to the current packaging producer responsibility regime.

The government intends to **keep** the packaging waste recycling note (PRN) and packaging waste export recycling note (PERN) system **for the time being**, pending the development of a new payment mechanism. It also launched a [consultation](#) on the PRN and PERN reform to make improvements around reporting and timeframes, as well as to introduce a new 'technical competence' test for compliance scheme operators and accredited reprocessors/exporters. It also looks at the interaction with the proposed deposit return system (DRS).

The government also intends to introduce **mandatory recyclability labelling**, using the Waste and Resources Action Programme (WRAP) "recycle now" mark. All packaging (except plastic films and flexibles) will have to be labelled with "recycle" or "do not recycle" by 31 March 2026 (plastic films and flexibles by 31 March 2027).

UK Competition and Markets Authority provides sustainability advice to government.

Following a public consultation, the CMA published [advice on how competition and consumer laws can help meet the UK's environmental goals](#). Under the current competition and consumer law frameworks, the CMA did not find any evidence to suggest firms are prevented from acting sustainably, however, it did find that **more clarity** around what is, and is not, legal **would assist firms in achieving sustainability goals without the fear of breaking the law**. The CMA believes there is some flexibility under the current framework in relation to **agreements that restrict competition and the environmental benefits** associated with them, and intends to bring forward **more guidance** in this area. In relation to consumer law, CMA suggested a number of actions such as **amending consumer law** to enable consumers to make more sustainable choices. It also recommended legislative changes to create standardised definitions for potentially **misleading terms like "recyclable" and "carbon neutral"**. The CMA is also planning to establish a new **Sustainability Taskforce** to lead its work in this area and support the UK's transition to a low carbon economy, bringing together colleagues from across the CMA and drawing on outside expertise. That taskforce will develop formal guidance, lead discussions with government, industry and partner organisations and keep the case for legislative change under review. The CMA will launch at least one new market study in a net zero-relevant market in the next financial year.





ClientEarth sends pre-action letter on duties regarding energy transition to Shell's board.

Environmental **NGO** ClientEarth [announced](#) that **in its capacity as a shareholder**, it has sent a pre-action letter to Shell plc. The letter argues that Shell's failure to properly prepare for 'net zero' puts the **directors in breach of their legal duties**. The claim is against the company's 13 executive and non-executive directors for their alleged breach of section 172 of the UK Companies Act 2006, which requires them to act in a way that promotes the company's success. This is the first UK case seeking to hold company directors personally liable in this way. ClientEarth is also calling on institutional investors to join or support the claim. ClientEarth lawyer Paul Benson said: "*We believe that there are sufficient grounds to assert that Shell's Board is mismanaging the material and foreseeable climate risk facing the company*". Shell responded to the letter in a Reuters [article](#) stating that it was delivering on its global strategy that it supported the Paris Agreement on climate by transforming its business to provide more low-carbon energy for customers. It added that the energy supply challenges we are seeing cannot be solved by litigation.

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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