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Policy and Legislation Report



Recent Developments in EU Environmental Policy and Legislation

*Matteo Fermeglia**

Assistant Professor of Climate Law and Governance, University of Amsterdam, Amsterdam, The Netherlands

m.fermeglia@uva.nl

Abstract

This section describes the significant political initiatives and acts of legislation in the environmental field adopted in the period from September 2022 until June 2023.

Keywords

European Green Deal – Net-Zero Industrial Act – Corporate Sustainability Due Diligence – deforestation – Nature Restoration Law – air quality – water pollutants – urban wastewater treatment

1 Introduction and Overview

More than one year after the Russian military invasion of Ukraine, the development and implementation of the REPowerEU plan is ongoing at

* Although published under the current affiliation, the article has been developed at Hasselt University, Hasselt, Belgium.

full speed. Yet the most remarkable developments in the European Union's environmental agenda over the last Months related foremost to stepping up the European Green Deal's external dimension. This is a major shift in the EU's approach to its global environmental and climate leadership. Yet at the same time, it begs questions as to what degree EU's unilateral efforts beyond its borders are desirable or even lawful against existing external constraints, among others, under WTO law.

At least four developments are of note as outlined below in this section. First, the adoption of the Net-Zero Industry Act. The Net-Zero Industry Act entails a re-thinking of several strategic approaches to low-carbon manufacturing and deployment of cutting-edge climate mitigation technologies to both achieve the European Green Deal's objective and ensure the bloc's self-sufficiency and resilience against external supply shocks. In this respect, such development has been recognized as the EU's legal, economic, and geopolitical response to the US Inflation Reduction Act. Second, the adoption of the Carbon Border Adjustment Mechanism (CBAM). The CBAM has been advocated as the cornerstone of EU's Fit-for-55 package insofar as it should ensure a level playing field between products produced within the EU as subject to carbon pricing under the EU ETS and products imported from third countries potentially subject to carbon leakage. Yet the effects of CBAM might stretch way beyond its stated purpose since compliance with CBAM requires an accurate tracking of greenhouse gases emissions intensity of products and materials across global supply chains. Third, important steps have been taken on the Corporate Sustainability Due Diligence legislation. Similarly to the CBAM, the Corporate Sustainability Due Diligence legislation imposes clear-cut and justiciable monitoring obligations upon large companies on their supply chains with regard to their environmental, climate and human rights impacts, thus deploying effects way further than EU boundaries. Fourth, yet not less important, the EU legislation on Deforestation provides for stringent monitoring requirements upon imports of certain goods (such as cattle, cocoa, coffee, palm-oil, soya and wood), which may lead to forest degradation, especially in the Amazon region.

In addition to the above developments, at least two other initiatives are worth noting, which relate to the significant advancements in the adoption of the Nature Restoration Law as one of the pillars of the European Green Deal and the announced overhaul of the legislation on air quality, urban wastewater treatment and water bodies pollutants.

2 European Commission Proposes the EU Net-Zero Industry Act

On 16 March 2023, the European Commission issued a proposal for a Regulation adopting the Net Zero Industry Act. The Net-Zero Industry Act aims to increase the production of low-carbon technologies while curbing the EU's reliance on highly concentrated imports. To this end, it aims to create favorable conditions for investment in net-zero technology by streamlining permit-granting processes, improving information, and decreasing administrative costs. The Act also aims to increase supply diversification for net-zero technologies and enable market access, as well as to improve skills by implementing measures to ensure a trained workforce supporting net-zero technology production in the EU. The Net-Zero Industry Act addresses technology that will contribute significantly to decarbonization, such as solar photovoltaics, onshore wind and offshore renewable energy, batteries and storage, heat pumps and geothermal energy, electrolyzers and fuel cells, biogas/biomethane, carbon capture, utilization, and storage, and grid technologies, sustainable alternative fuels technologies, etc.

As part of the Green Deal Industry Plan, the Net-Zero Industry Plan is coupled by the advancement of a European Critical Raw Materials Act, which will address the supply of critical raw materials in Europe, as well as by the ongoing reform of the internal electricity market to foster renewable energy generation.

For further information, see:

- European Commission Press Release, Net-Zero Industry Act: Making the EU the home of clean technologies manufacturing and green jobs, 16 March 2023, IP/23/1665.
- Commission Proposal for a Regulation on establishing a framework of measures for strengthening Europe's net-zero technology products manufacturing ecosystem, COM (2023) 161 final.
- Commission Proposal for a regulation establishing a framework for ensuring a secure and sustainable supply of critical raw materials, COM (2023) 160 final.

3 European Parliament Reaches Agreement on the EU Corporate Sustainability Due Diligence Legislation

On 1 June 2023 and amidst several last-minute pushbacks, the EU legislation on Corporate Sustainability Due Diligence was approved by the European

Parliament in the Plenary session. The proposal for a Directive on Corporate Sustainability Due Diligence was adopted by the European Commission on 23 February 2022, where the Council adopted its general approach on the proposal on 1 December 2022.

The Corporate Sustainability Due Diligence legislation aims to impose specific requirements on large companies – thus excluding SMEs – to monitor, prevent and mitigate their environmental and human rights impact throughout their value chains within and outside the EU. The proposal puts forwards fines for non-compliance with the due diligence obligations, as well as a compensation mechanism for damages resulting from non-compliance with the companies' due diligence obligations. According to the document approved by the European Parliament, the legislation includes EU-based companies with more than 250 employees and a net annual revenue worldwide of at least 40 million euros; parent companies with more than 500 employees and a net annual revenue worldwide of at least 150 million euros; and non-EU companies with \$150 million net annual revenue if at least 40 million euros are generated in the EU. Moreover, the current Corporate Sustainability Due Diligence legislation compels companies' directors to establish transition strategies to align their businesses with the Paris Agreement's global temperature objectives. The vote crystallizes therefore the European Parliament's position for the upcoming trilogue negotiations, with a view to achieve a final agreement on the final legislative text before the next European's elections.

For further information, see:

- European Parliament Press Release, MEPs push companies to mitigate their negative social and environmental impact, 1 June 2023, 20230524IPR91907.
- European Commission proposal for a Directive on Corporate Sustainability Due Diligence and amending Directive 2019/1937/EU.

4 Council Adopts Its Position on the Proposal for the EU Nature Restoration Law

On 20 June 2023, the Council reached a long-awaited agreement on the proposal for a Nature Restoration Law. The Nature Restoration Law is a cornerstone of the European Green Deal and the European Biodiversity Strategy for 2030. The EU Nature Restoration Law mandates targets for ecosystems restoration – up to 20% of EU's land and 20% of sea areas by 2030 and all ecosystems by 2050. Furthermore, the current proposal for the EU Nature Restoration Law includes further legally binding targets for specific land and marine ecosystems, such as land and forests, freshwater and urban ecosystems.

The Council resolved that Member States will implement restoration measures to restore at least 30% of habitats in terrestrial, coastal, freshwater, and marine ecosystems that are in poor condition by 2030, with a view to reach 60% by 2040 and at least 90% by 2050. The Council underscored the difficulties in collecting data on habitats conditions in Member States. Therefore, it was agreed that quantitative restoration efforts would only be implemented in places where the state of the habitat is known.

Under the proposed Council approach, member states would submit to the Commission on a regular basis national restoration plans outlining how they intend to meet the targets, as well as monitor and report on their progress. The Council chose a step-by-step strategy in this regard. Instead of presenting entire plans until 2050, two years after the regulation enters into force, Member States would first submit national restoration plans through June 2032, with a strategic perspective for the period beyond June 2032. They would present rehabilitation plans through 2042 with a strategic overview until 2050 by June 2032, and plans until 2050 by June 2042. To improve coherence, the Council attempted to standardize the monitoring and reporting cycles as much as practicable.

The general approach will serve as the Council's mandate for the negotiations to be conducted with the European Parliament on the final shape of the legislation.

For further information, see:

- Council of the EU, Press Release, Council reaches agreement on the nature restoration law, 20 June 2023, 461/23.
- Commission Proposal for a Regulation on nature restoration, COM (2022) 304 final.

5 Council and Parliament Adopt Landmark EU Deforestation Law

On 6 June 2023, the EU Deforestation law (Regulation 2023/1115/EU) has been published in the Official Journal. The publication follows the European Parliament's approval (by vast majority) on 19 April 2023, which in turn followed the official endorsement by the Council and the political agreement on 6 December 2022. The Deforestation law replaces Regulation 2010/995/EU. The EU's Deforestation law has entered into force on 29 June 2023.

The EU Deforestation law seeks to target the most important commodities causing global deforestation, such as oil palm, soya, timber, cocoa, coffee, cattle, and rubber. It stresses the importance of ensuring that animal feed does not lead to deforestation. Exceptions are provided, however, for specified

by-products of the production process, recycled commodities and products that have completed their lifecycle and would otherwise be disposed of as waste should be exempt from the Regulation.

The Regulation establishes requirements for relevant commodities and goods to combat deforestation and forest degradation while taking human rights, indigenous people and local communities rights into account. It underlines the significance of including human rights violations connected with deforestation and forest degradation in the risk assessment process.

The Regulation has been welcomed by both the EU legislators and civil society as a watershed moment by setting gold standards for forest protection while enhancing accountability and enforcement.

For more information, see:

- European Parliament press release, Parliament adopts new law to fight global deforestation, 19 April 2023, 20230414IPR80129.
- Regulation EU/2023/1115 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation EU/2019/995, OJ L 150, 9.6.2023, 206–247.

6 Regulation on the Carbon Border Adjustment Mechanism (CBAM) Enters into Force

Following a provisional agreement among the European legislators on 13 December 2022 and the publication in the Official Journal on 16 May 2023, the EU Regulation establishing a Carbon Border Adjustment Mechanism (CBAM) has officially entered into force. The CBAM will enter into its transitional phase on 1 October 2023, where the first reporting period for importers subject to the regime will end on 31 January 2024.

The CBAM will first apply to imports of specific items and selected precursors, whose manufacturing is greenhouse gases intensive and present the highest exposure to carbon leakage, namely: cement, iron and steel, aluminum, fertilizers, power, and hydrogen. A review of the CBAM's operation will be conducted during its transitional phase to appraise eventual incorporation of further commodities within the EU ETS-covered sectors.

For further information, see:

- European Commission press release, European Green Deal: Agreement reached on the Carbon Border Adjustment Mechanism (CBAM), 13 December 2022, IP 22/7719.

- European Commission Regulation 2023/956/EU establishing a carbon border adjustment mechanism, OJ L130 vol. 66, 16 May 2023, 52–105.

7 Commission Proposes Overhauling of Air Quality, Water Pollutants and Urban Wastewater Treatment Legislation

On 20 October 2022, the Commission adopted a broad set of rules for ambient air, surface and groundwater pollutants and treatment of urban wastewater. More specifically, the Commission legislative proposals amend the rules of the Ambient Air Quality Directive (no. 2008/50/EC), the Urban Wastewater Treatment Directive (no. 1991/271/EEC) and water quality legislation. With regard to the Ambient Air Quality Directive, interim air quality standards are set for 2030 based on the updated WHO Guidelines. The proposed revision also includes provisions on the right to compensation for violation of air quality rules. Importantly, the proposed amendments come in the wake of the Court of Justice of the EU's Grand Chamber decision rejecting individual's rights to compensation on the basis of Article 13(1) and 23(1) of the Ambient Air Quality Directive (Case C-61/21, *JP v Ministre de la Transition écologique and Premier ministre*, ECLI:EU:C:2022:1015).

With regard to urban wastewater legislation, the Commission's proposal foresees several improvements will support health and environmental protection. These include obligations to recover nutrients from wastewater, new standards for micropollutants and new monitoring requirements for microplastics.

Last, based on up-to-date scientific evidence, the Commission has advanced an updated and more comprehensive list of water pollutants to be more strictly controlled in surface waters and groundwater. The list includes 25 substances with well-documented problematic effects on nature and human health, notably including per- and polyfluoroalkyl substances (PFAS), pesticides (including glyphosate), antibiotics and Bisphenol A.

For further information, see:

- European Commission, Press release, European Green Deal: Commission proposes rules for cleaner air and water, 26 October 2022, IP/22/6278
- European Commission proposal for a Directive on ambient air quality and cleaner air for Europe (recast), COM (2022) 542 final
- European Commission proposal for a Directive concerning urban wastewater treatment (recast), COM (2022) 541 final

- European Commission proposal for a Directive amending Directive 2000/60/EC establishing a framework for Community action in the field of water policy, Directive 2006/118/EC on the protection of groundwater against pollution and deterioration and Directive 2008/105/EC on environmental quality standards in the field of water policy, COM (2022) 540 final

8 Other Legal Acts and Policy Developments

N°	Title	Brief description	Source (Official Journal, webpage, etc.)
1	Carbon removals	On 30 November 2022, the proposal for a certification scheme on carbon removals was approved by the European Commission. The proposal aims to establish voluntary markets for carbon removals deriving from a wide range of activities, including carbon farming, carbon capture and storage, and reforestation.	COM(2022) 672 final European Commission, Carbon removals Press release: IP/22/7156
2	Green claims	On 22 March 2023, the Commission issued a proposal for a Directive on common criteria against greenwashing and misleading claims (Green Claims Directive). The proposal sets out specific rules to substantiate claims related to sustainability and environmental impacts of products while regulating and limiting environmental labelling schemes.	COM(2023) 166 final European Commission, Greenwashing Press release: IP/23/1692
3	Pollinators	On 24 January 2023, the Commission presented its Communication “A New Deal for Pollinators”, revising the precedent 2018 EU Pollinators Initiative. The revised EU Pollinators Initiative sets specific targets and objectives for pollinators conservation by 2030.	COM(2023) 35 final European Commission, Pollinators Initiative Press release: IP/23/281

N°	Title	Brief description	Source (Official Journal, webpage, etc.)
4	Wildlife trafficking	On 11 November 2022, the Commission issued the revised EU Action Plan to put an end to illegal wildlife trade. The revised Action Plan was announced in the EU Biodiversity Strategy for 2030. The proposal was adopted ahead of the CITES COP19 held in November 2022.	COM(2022) 581 final European Commission, Environment, Wildlife trade Press release: IP/22/6538
5	Industrial Emissions Directive	On 16 March 2023, the Council adopted its general approach on the proposed revision of the Industrial Emissions Directive. The proposal was put forward by the European Commission on 5 April 2022.	Council, Industrial Emissions Press release: 194/23
6	Persistent organic pollutants in waste	On 24 October 2022, the Council adopted a Regulation to reduce limit values for the presence of persistent organic pollutants in waste and to ensure higher protection of human health and the environment. The Council Regulation amends the annexes to the persistent organic pollutants Regulation.	Council, Persistent organic pollutants Regulation EU/2019/1021, OJ L 169, 25.6.2019, 45–77 Press release: 888/22
7	Social Climate Fund	On 16 May 2023, the Regulation establishing the Social Climate Fund entered into force after its publication in the Official Journal. The Social Climate Fund aims to mobilize financial resources towards households, transport users and micro-enterprises particularly vulnerable to the future inclusion of the residential and transport sectors in the scope of the EU ETS.	Regulation 2023/955/ EU, OJ L 130, 16.5.2023, 1–51 Social Climate Fund

