



SEPTEMBER 2021

6 Sustainability Takeaways in EU Antitrust & Regulatory

Latham lawyers highlight the key takeaways and developments of the past year.

1 [Delivering the European Green Deal | Fit for 55 package](#)

European Commission | 14 July 2021

The European Commission has put forward Fit for 55, a package of legislative proposals to make its policies fit for delivering the updated 2030 greenhouse gas emissions net reduction target of 55% below 1990 levels, as set out in the [2030 Climate Target Plan](#) and written into the [European Climate Law](#).

The Fit for 55 proposals cover a wide range of policy areas, including climate, energy, transport, and taxation, and sets out the ways in which the EU will reach its updated 2030 target in real terms.

The Commission's Directorate-General for Climate Action is responsible for the following proposals:

- Increase the ambition of the EU Emissions Trading System (EU ETS)
- Strengthen the Market Stability Reserve linked to the review of the EU ETS
- Revise the EU ETS Directive concerning aviation
- Revise the EU ETS Directive concerning aviation (ICAO notification)
- Update Member State emissions reduction targets (Effort Sharing Regulation) in line with the 2030 climate target plan
- Land use, forestry, and agriculture
- Revise the CO2 emission performance standards for new passenger cars and vans
- Social Climate Fund

See more [here](#) and [here](#)

2 [Review of the EU rules on cooperation with competitors](#)

European Commission | 13 July 2021

The European Commission has launched the impact assessment phase of its review of the Horizontal Block Exemption Regulations (HBERs) and published a public consultation to gather stakeholders' views on proposed policy options. The HBERs comprise the two block exemption regulations (for research and development (R&D) and specialisation agreements, respectively), and the Guidelines on horizontal cooperation agreements, which provide an analytical framework for assessing the legality of common types of cooperation agreements with competitors, namely those concerning R&D, production, purchasing, commercialisation, standardisation, and information exchange. All policies, including competition law, are required to contribute to the [European Green Deal](#). As highlighted by a recent Commission [decision](#) sanctioning a collusion on technical developments relating to clean car emissions between car manufacturers, cooperation agreements with competitors may be necessary to achieve environmental and sustainable goals, but at the same time, they can raise competition issues. The consultation will seek to gather input on what motivates companies to pursue sustainability initiatives and what type of sustainability initiatives are pursued with what type of agreements. The Commission will use the current revision of the HBERs to clarify its approach and help businesses assess how they can pursue sustainability objectives without infringing competition law. [See more](#)

3 [Public consultation on the creation of a "competition law and sustainability" sandbox](#)

Hellenic Competition Commission | 13 July 2021

Following the publication of a discussion paper on sustainability issues and competition law in September 2020, the Hellenic Competition Commission (HCC) has launched a public consultation on its regulatory sandbox project. The sandbox will allow businesses to test and pursue sustainability agreements without fear of violating competition rules. The impact of these initiatives on competition and sustainable development will be assessed by the HCC, through a new process of submission and evaluation that aims to enhance legal certainty for businesses and reduce regulatory risk for investments. The public consultation closed on 31 August 2021. [See more](#)

4 [Consultation report on the regulation of ESG data and ratings providers](#)

IOSCO | July 2021

The board of the International Organization of Securities Commissions (IOSCO) published a consultation report with the aim of assisting IOSCO members in understanding the implications of the activities of ESG ratings and data products providers. The report proposes recommendations to mitigate risks associated with ESG ratings and data products and to address some of the challenges faced by ESG ratings and data products providers, users of ESG ratings and data products, and the companies that are the subject of these ESG ratings or data products. See more [here](#) and [here](#)

5 [Guidance for harmonised application of single-use plastic rules](#)

European Commission | 31 May 2021

The European Commission has published guidance on the EU rules on single-use plastics and adopted an implementing decision on the monitoring and reporting of fishing gear placed on the market and waste fishing gear collected. These rules aim to reduce marine litter from single-use plastic products and fishing gear and promote the transition to a circular economy with innovative and sustainable business models, products, and materials. [See more](#)

6 [Publication of an information document regarding competition law and sustainability agreements](#)

Competition and Markets Authority | 27 January 2021

The Competition and Markets Authority (CMA) has published an information document regarding the compatibility of sustainability agreements (arrangements between businesses to work together to do things such as reduce waste or improve the environmental standards of their products) with competition law. The document outlines the current framework for the self-assessment of competition law risk and sets out the key points that businesses and trade associations should consider when making sustainability agreements. [See more](#)

Additional News

- **The European Commission will review the EU ETS** against the updated 55% target and will propose extending the EU ETS to new sectors of the economy. The Commission will also review the EU ETS "market stability reserve" for handling unused emissions allowances after three years of its operation. [See more](#)
- **The European Commission fined two car manufacturers** €875 million for breaching cartel rules when working on the development of nitrogen oxide cleaning technology for cars which helps reduce harmful emissions. The car manufacturers, along with a third manufacturer, had agreed to avoid competition on cleaning better than what was required under EU emission standards, even though the necessary technology was available.

Commissioner Vestager said: "Competition and innovation on managing car pollution are essential for Europe to meet our ambitious Green Deal objectives. In this decision shows that we will not hesitate to take action against all forms of cartel conduct putting in jeopardy this goal". However, the car manufacturers warned that prohibiting this kind of cooperation would ultimately limit innovation and could prevent players in other sectors from entering into technical cooperation agreements promoting sustainability.

The main issue stemming from the decision is how to draw the line between legitimate technical cooperation and unlawful collusion. Conscious that competition law should not be an obstacle to achieve environmental goals, the Commission announced that it gave guidance, in the form of a letter, to the car manufacturers on what type of discussions competitors are allowed to have — including discussions on standard-setting and joint positions on legislation. When this letter becomes public, it will serve as guidance for other industries cooperating on developing green technology and other forms of innovation. [See more](#)

- **The European Commission adopted a much-anticipated [package of measures](#)** as part of its policy to help direct capital towards sustainable initiatives and to help the European Union reduce its greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels and reach its 2050 carbon neutrality goal. The package of measures include a proposed **Corporate Sustainability Reporting Directive (CSRD)**, which would amend the reporting requirements under the Non-Financial Reporting Directive (NFRD) and seek to ensure that companies provide consistent and comparable sustainability information; the **EU Taxonomy Climate Delegated Act**, which aims to identify the economic activities that best contribute to climate change mitigation and adaptation; and **Six Delegated Acts** on fiduciary duties, investment, and insurance advice, which aim to ensure that financial firms (e.g., advisers, asset managers, and insurers) include sustainability in their procedures and investment advice to clients. See more [here](#) and [here](#)
- **Following the publication of a working paper on climate change** in May 2020, the French Competition Authority announced in its priorities for 2021 that sustainable development will continue to be integrated in its decision-making practice. [See more](#)
- **The European Commission published an update on the Circular Plastics Alliance (CPA)**, which has delivered its first actions. The CPA aims to boost the EU market for recycled plastics to 10 million tonnes by 2025. [See more](#)
- **The European Central Bank (ECB) published its [Guide to Fit and Proper Assessments](#)**, which lays out the requirements that all institutions under its direct supervision conduct a fit and proper assessment of members of the management body (including both executive directors and non-executive directors). Under the ECB's regime, fitness and propriety is assessed against five criteria: (i) experience, (ii) reputation, (iii) conflicts of interest and independence of mind, (iv) time commitment, and (v) collective suitability. See more [here](#) and [here](#)
- **The Financial Conduct Authority (FCA) published a letter** sent to chairs of authorised fund managers setting out the UK regulator's expectations regarding disclosures by funds that make ESG-related claims. The FCA aims to ensure that any ESG-related claims are clear and not misleading, both when a fund is applying for authorisation and on an ongoing basis. The FCA published these principles in response to the significant increase in funds applying for authorisation that have an ESG or sustainability focus. See more [here](#) and [here](#)
- **Commissioner Vestager provided the keynote speech** at the 25th IBA Competition Conference, on competition policy in support of the Green Deal. [See more](#)
- **The European Commission launched a revision of its State aid rules** to sustain the Green Deal objectives. The revised Climate, Energy and Environmental Aid Guidelines (CEEAG) will likely be adopted this autumn and enter into force next year. The CEEAG framework is intended to help Member States reach the Fit for 55 objectives over the next 10 years. [See more](#)

Contacts

Should you have any questions or would like further information in relation to any of these topics, please do not hesitate to contact us.



[Paul Davies](#)
Partner, London



[David Little](#)
Partner, Brussels/London



[Jean Paul Poitras](#)
Partner, Brussels



[Nicola Higgs](#)
Partner, London



[Michael Green](#)
Counsel, London



[Cesare Milani](#)
Counsel, Milan



[Alexander Wilhelm](#)
Associate, Frankfurt



[Clément Pradille](#)
Associate, Brussels



[Leticia Sitges](#)
Associate, Madrid



[Anuj Ghai](#)
Associate, London



[Laurenz Bové](#)
Associate, Brussels/London



[France-Hélène Boret](#)
Knowledge Management Counsel, Brussels

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