



DECEMBER 2021

6 Sustainability Takeaways in EU Antitrust & Regulatory

Latham lawyers highlight key takeaways and developments in the sustainability space from the second half of the year.

1

[Truly Green? CMA Continues to Evolve Guidance and Metrics for Companies' Environmental Claims](#)

Competition and Markets Authority | 20 September 2021

The Competition and Markets Authority's (CMA's) [Green Claims Code](#) (the Code) and [final guidance](#) (the Guidance) on environmental claims represent the culmination of extensive consultation and investigation into claims about "green" goods and services. The Code establishes six key principles for businesses that make claims about the environmental credentials of their products or services and imposes onerous compliance standards. On 13 October 2021, the CMA supplemented the Guidance with a [complementary code](#) for shoppers, which suggests five key considerations for consumers when assessing environmental claims. The CMA has also stated that it will conduct a holistic review of online and offline environmental claims in 2022. [See more](#)

2

[European Commission Competition Policy Supports European Green Deal](#)

European Commission | 10 September 2021

EU Competition Commissioner Margrethe Vestager recently highlighted that tackling climate change and promoting sustainability are key European Commission priorities and that competition policy should be enforced more vigorously than ever and adjusted to support these goals. Following an extensive consultation on how the competition rules work with green policies, which ran from October to November 2020, the Commission aims to produce guidance on how businesses may collaborate on sustainability without infringing competition rules. The Commission, Commissioner Vestager explained, is open to discussions, in the right cases, with individual stakeholders about individual projects to give them guidance. The Commissioner also highlighted the tension created by the competition principle that consumers must receive a fair share of the resulting benefits from any collaboration between companies. State aid policy is another a key area to achieve the Green Deal. Many businesses will need to invest in carbon-free production processes and infrastructure and prepare for more expensive sources of energy (e.g., renewable, hydrogen), and will need support to this end. In this respect, the Commissioner noted that billions of euros will be invested in State aid in the coming years to help "green" the EU's economy. The Commissioner briefly touched on merger control, focusing the narrative on the need to prevent mergers that would stifle innovation (the so-called "killer acquisitions"). She pointed to guidance published by the Commission in March 2021 that encourages Europe's national competition authorities to refer such mergers to the Commission. [See more](#)

3

[Net Zero Strategy Aims to Decarbonise UK Economy to Meet 2050 Target](#)

UK Government | 19 October 2021

Last year, Prime Minister Boris Johnson set out a 10-point plan for a green industrial revolution, laying the foundations for a green economic recovery from the impact of COVID-19 with the UK at the forefront of the growing global green economy. A new Net Zero Strategy builds on the approach of the 10-point plan to keep the UK on track for carbon budgets, the 2030 Nationally Determined Contribution, and achieving net zero by 2050. The Strategy focuses on key sectors of the UK economy that the government views as crucial for decarbonisation, including transport, power, and heat and buildings, and introduces policies and proposals to reduce emissions in these sectors. See more [here](#) and [here](#)

4

[CMA Issues Consultation on Interplay Between Environmental Sustainability and Competition and Consumer Law Regimes](#)

Competition and Markets Authority | 29 September 2021

The CMA's consultation on the relationship between environmental sustainability and the competition and consumer law regimes, which closed on 10 November 2021, sought views from stakeholders on advice the CMA should provide to the UK government related to three questions the government asked the CMA in July 2021: (i) If, and how, do current competition and consumer legal frameworks constrain or frustrate initiatives that might support the UK's net zero and sustainability goals? (ii) Are there changes to the UK's competition and consumer law that would help to achieve the UK's net zero and sustainability goals? (iii) Are there other opportunities in the UK's competition and consumer policy toolbox that would support the UK's net zero and sustainability goals that the government should be considering?

The CMA indicated that its primary focus in giving advice will be on competition law enforcement, the merger control regime, consumer protection law, and the markets regime, and that its aim is to publish the resulting advice to the government in early 2022. [See more](#)

5

[ESAs Publish Final Report on Draft RTS on Taxonomy-related Product Disclosures](#)

European Securities and Markets Authority | 22 October 2021

The European Supervisory Authorities' (ESAs') final report on draft Regulatory Technical Standards (RTS) addresses the content and presentation of certain product-level disclosures under the Sustainable Finance Disclosure Regulation (SFDR). The amending RTS revise the existing draft RTS that the ESAs finalised in February 2021 to include taxonomy-related provisions in the pre-contractual, periodic, and website disclosures under SFDR. The amending RTS include changes to the mandatory pre-contractual and periodic reporting templates that will be required from 1 July 2022. The proposals mainly concern products under Articles 5 and 6 of the EU's Taxonomy Regulation, but also include wider changes to the order and content of information in the mandatory templates. Furthermore, in a key policy change, the final report notes that an investment that meets the Taxonomy Regulation's "environmentally sustainable" test will no longer automatically qualify as an SFDR "sustainable investment". Instead, the SFDR's "do no significant harm" test will need to be applied separately in order to conclude that an investment amounts to a sustainable investment under SFDR.

The European Commission has three months to decide whether to adopt the RTS. If adopted, the European Parliament and European Council will have another three months to scrutinise the RTS (which may be extended by a further three months). If no objections are raised, the RTS will be considered final and will be published in the Official Journal. [See more](#)

6

[European Enforcers Target COVID-19 and Climate-related Disclosures](#)

European Securities and Markets Authority | 29 October 2021

The European Securities and Markets Authority (ESMA) issued its annual Public Statement on European Common Enforcement Priorities for the attention of listed companies. ESMA emphasised that firms must take into account climate-related matters and taxonomy-related disclosures in their annual financial reports. ESMA highlighted that issuers and auditors must consider climate risks when preparing and auditing International Financial Reporting Standards (IFRS) financial statements (even if the IFRS do not explicitly refer to climate-related matters), and emphasised the need for consistency between the information disclosed within the IFRS financial statements and the non-financial information concerning climate-related matters. [See more](#)

Additional News

- The European Commission has adopted a [communication on a competition policy fit for new challenges](#), which frames the important role of competition policy in Europe's path towards recovery, the green and digital transitions, and a resilient European Single Market. The communication highlights how competition policy can adapt to new market circumstances, policy priorities, and customer needs; for example, the Commission has adopted the sixth amendment of the [State aid Temporary Framework](#) to enable Member States to provide targeted support to companies during the COVID-19 crisis. Furthermore, the Commission is pursuing a review of competition policy tools to ensure all competition instruments (merger, antitrust, and State aid control) remain fit for purpose and complement the existing toolbox. [See more](#)
- Commissioner Vestager announced that the European Commission's new horizontal guidelines will "very soon" provide guidance on sustainability and cartel rules. The Commissioner noted that companies may need to cooperate with the Commission to eliminate bad environmental habits (e.g., excess plastic packaging). The Commission aims to provide companies with legal certainty that they will not run afoul of the EU's rules on cartels. In the meantime, the Commission encourages companies that would like to cooperate in green projects to approach the Commission for individual guidance, in the right cases, to ensure their cooperation is legal.

The Commissioner also announced that the new rules on State aid for climate, energy, and the environment are the centerpiece of the competition law support to the European Green Deal. These new rules will vastly expand the types of projects that Member State governments can support in order to cover the full range of the Green Deal's goals. Moreover, the new rules will allow for much larger amounts of State aid to support these goals, as well as tighter conditions to preserve the level playing field and ensure that companies do not receive more aid than necessary. The new rules will be adopted "shortly". See more [here](#) and [here](#)
- The Commission launched a consultation on a proposal to define cross-border projects in renewable energy generation. In July 2021, the EU adopted its Connecting Europe Facility (CEF) programme for 2021-2027. The CEF is a key EU funding instrument to promote growth, jobs, and competitiveness through targeted infrastructure investment at the European level. It supports the development of high-performing, sustainable, and efficiently interconnected trans-European networks in transport, energy, and digital services. For this funding period, a new category of eligible "cross-border projects in the field of renewable energy" has been introduced. Renewable energy project developers were asked to provide input by 18 November 2021 on the European Commission draft delegated legislation, which aims to lay down the specific selection criteria and selection procedure of cross-border projects in the field of renewable energy. [See more](#)
- European Commission President Ursula von der Leyen recently stressed that reducing the EU's dependency on fossil fuels such as gas, oil, and coal is crucial. Wholesale gas prices in Europe have almost doubled compared to a year ago; by contrast, renewable energy prices have largely remained stable and have even decreased in recent years. President von der Leyen noted that the EU must speed up its work on the Green Deal in order to become more energy-independent: "In the long term, the Green Deal and renewables are the solution to the rising electricity prices". [See more](#)
- The European Commission published proposed amendments to the General Block Exemption Regulation (GBER) that aim to reflect the changes to various State aid guidelines that are currently being reviewed (namely, the Regional Aid Guidelines; the Climate, Energy and Environmental State aid Guidelines; the Risk Finance Guidelines; and the Research, Development and Innovation Framework) and to further facilitate support for the EU's green and digital transition. The GBER declares specific categories of State aid compatible with the Treaty on the Functioning of the EU (TFEU), provided that they fulfil certain conditions, and exempts these categories from the requirement of prior notification to and approval by the Commission.

The proposed amendments to the GBER aim to help governments provide such funding more quickly, without unduly distorting competition. Public authorities, companies, and other interested parties had until 8 December 2021 to provide feedback. [See more](#)
- The European Commission adopts revised communication on State Aid Rules for Important Projects of Common European Interest (IPCEIs). IPCEIs are strategic and significant joint investment projects that involve intensive cross-border collaborations between Member States and industry to enable innovation in a strategic value chain.


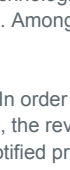
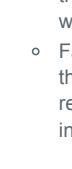
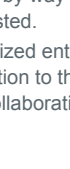
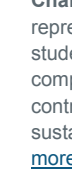
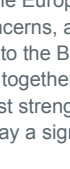






The European Commission has adopted a revised IPCEI Communication to promote more collaborations between Member States and industry and make more extensive use of "environmental" IPCEIs than under the 2014 Communication on aid for IPCEIs.

The revised IPCEI Communication, which will apply from 1 January 2022, sets the criteria for the Commission to assess Member State support to cross-border IPCEIs that overcome market failures and enable breakthrough innovation in key sectors and technologies and infrastructure investments, with positive spill-over effects for the EU economy at large. Among other things, the revised IPCEI Communication:

 - Aligns its objectives with the current EU priorities. In order to support the environmental strategies of the EU and to accelerate the EU's green transition, the revised IPCEI Communication requires Member States to provide evidence of the notified projects of the notified projects the "do no significant harm" principle.
 - Further enhances the European and open character of IPCEIs. All Member States will be informed of the possible emergence of an IPCEI, for example, by way of preparatory contacts and meetings, and will be given the opportunity to participate if interested.
 - Facilitates the participation of small and medium-sized enterprises (SMEs) in IPCEIs. SMEs will have the possibility to have a more limited own contribution to the projects than otherwise required. The revised IPCEI Communication also encourages collaborations between larger companies participating in an IPCEI and SMEs. [See more](#)
- The European Commission has published a special issue of its Competition Policy Brief, featuring articles by young winners of the Commission's "Greening of Competition Policy" Student Challenge. The Brief is not necessarily reflective of the European Commission's perspective, rather it represents the bold and thought-provoking views, concerns, and suggestions of young professionals, students, and researchers. Indeed, each contribution to the Brief will enrich the ongoing debate about how competition rules and sustainability policies can work together. Two common views emerge from the contributions: i) competition policy rules and tools must strengthen and sharpen in order to support sustainability policies and ii) competition policy can play a significant role in creating a greener future. [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.

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Environment, Land & Resources Blog

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