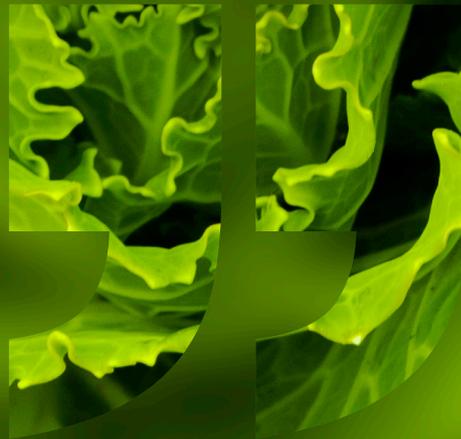


C L I F F O R D

C H A N C E



**EU GREEN DEAL –
RESETTING THE
ENVIRONMENTAL
AND CLIMATE
CHANGE AGENDA**



THOUGHT LEADERSHIP

DECEMBER 2019



EU GREEN DEAL – RESETTING THE ENVIRONMENTAL AND CLIMATE CHANGE AGENDA

The European Commission has published a bold package of climate and environmental policies with ambitious aims including climate neutrality by 2050, a zero-pollution environment, and a halt to biodiversity loss. The ‘European Green Deal’ Communication contains a wide range of sector-specific and economy-wide measures to be put in place over the next two years. In this briefing we consider some of the key measures proposed.

When new EU Commission President Ursula von der Leyen mentioned in her speech at the Madrid COP 25 climate meeting that the new Commission’s number one priority is the “transition to a climate neutral economy by 2050”, it was clear that its new climate and environmental policy would be far-reaching. The Commission has now published a Communication on climate and environmental policy labelled the “European Green Deal” (EGD). With this name (a nod to the US President Roosevelt’s ‘New Deal’ social and economic policies focused on bringing the US out of the Great Depression in the 1930s), it is much more than an update of current commitments. Following increasingly urgent calls to halt climate change and environmental degradation of the planet, and with no less ambition than Roosevelt’s New Deal, the EGD represents a much broader ‘reset’ of EU environmental, energy, economic and social policy with the aim of achieving the following key goals:

- a climate-neutral economy by 2050;
- supplying clean, affordable and secure energy;
- a zero pollution and toxic-free environment;
- a push for a global target to halt biodiversity loss; and
- a fair healthy and environmentally-friendly food system.

The EGD seeks to mainstream these objectives through the whole EU economy by:

- ensuring a flow of investment (through EU funding and facilitation of private

sector funding) to meet increased climate and energy targets, while using funding also to ensure that there is a socially ‘just transition’ to these more stringent goals;

- doing more to mobilise research and facilitate innovation, encourage greener national budgets and implement environmentally positive price signals, e.g. through eradicating tax advantages for fossil fuels; and
- ensuring that its policies ‘do no harm’ (a so-called ‘green oath’) ensuring that the burden falls fairly on all parts of society.

We look below at some of the key specific measures proposed in the EGD. The full list of measures and timelines are set out in the Annex to this briefing.

Climate neutrality by 2050 Strengthened climate targets

A net-zero emissions goal by 2050 has been EU Commission policy since 2018, aimed at meeting the Paris Agreement objective of limiting climate temperature increase to 2°C (and pursuing efforts to limit further to 1.5°C). Recognising that current EU policies would only lead to a 60% fall in greenhouse gas (GHG) emissions by 2050, the EGD now presents some clearer detail around the measures needed to achieve the 2050 goal. It proposes a European ‘Climate law’ (to be published in March 2020). This would set the goal in legislation to ensure that all EU policy in all sectors contributes to achieving it.

Key to achieving such an ambitious long-term target are the interim goals that will spur short- and medium-term action.

The EGD proposes an enhanced 2030 target of at least a 50% (and towards 55%) reduction in GHG emissions (compared with 1990 levels). This is a significant ramp-up from the 40% reduction contained in current EU legislation under the 2030 Climate and Energy package.

The Commission envisages tightening Member States' GHG reduction targets in all sectors (whether inside or outside the EU Emissions Trading System).

Extension of Emissions Trading System

Key among the measures proposed to bring the EU to climate neutrality is a proposed extension to the EU Emissions Trading System (EU ETS). Currently applying only to a limited number of heavy industries, aviation, combustion activities and land-use change, the Commission is contemplating extending it much more broadly, for example to shipping and road transport, and buildings. While such a radical change could lead to significant emission cuts if the carbon price can be maintained at a suitable level, this could add great complexity to the EU ETS and a significant administrative burden to asset owners/operators.

The Commission also intends to raise the level of effort on the aviation sector by reducing the level of allowances issued free to airlines.

Carbon tariffs on imports

Possibly the most eye-catching proposal in the EGD is a 'carbon adjustment mechanism' at the EU border for 'selected sectors' to reduce the risk of carbon leakage (i.e. higher regulatory standards in the EU leading to production being displaced to outside the EU). This proposal is described as an alternative to existing measures which seek to assist heavy industry in dealing with the increased cost of climate measures (e.g. free emission allowances within the EU ETS or compensation for increased electricity costs). This measure is likely to be highly contentious and could cause further trade tensions (particularly with the US) at a time when trade relations are already strained (e.g. by recent disputes

relating to steel and aluminium imports). This is likely to be a fruitful source of challenges before the WTO.

Supplying clean affordable and secure energy

The EU Energy Union already seeks to achieve the three goals of clean, affordable and secure energy. The EGD reinforces these objectives, noting that energy efficiency needs to be prioritised with a power sector based largely upon renewable energy sources. Increasing offshore wind production is picked out as an essential element in this effort. A new plan is also proposed for a competitive decarbonised gas market to help in the development of decarbonised gases.

Member States are already required to present their finalised Integrated National Energy and Climate plans to the Commission by the end of 2019 (based on pre-existing climate targets). Through the process of updating these plans, the EU will legislate by June 2021 to require Member States to align these plans with the new climate targets mentioned above in 2023.

The EGD also recognises that major development of supporting 'smart' infrastructure and technology will be required to secure these goals, and specific mention is made of smart grids, hydrogen networks, carbon capture, storage and utilisation (CCUS), and energy storage. The Commission will continue to review the regulatory framework to ensure it will facilitate development in these areas.

A review of the Commission's Environmental and Energy State aid Guidelines in 2021 will also be undertaken with a view to facilitating the phase-out of fossil fuels.

Circular Economy and Industrial Strategy

The EGD rightly recognises the link between industrial development and the green economy, and therefore aims to put in place an industrial strategy to help develop areas of the wider economy necessary for the low carbon transition (an approach that the UK, for example, has recently adopted).

As one would expect, an industrial strategy would highlight the need for the development of low carbon technologies. However, it also covers support for sustainable products and services more generally. To this end the EGD announces that a new EU Circular Economy Action plan will be put in place (just four years after the last version). In particular, the strengthened plan will contain a new sustainable products policy which will require all products to be designed based on:

- a common methodology and principles;
- prioritising the reduction and reuse of materials before recycling them; and
- minimum requirements to prevent harmful products being placed on the EU market.

The Commission would also consider whether there should be a 'right to repair' products. How that would work in detail remains to be seen, but the intention is to empower consumers to make the most of their role and purchasing power in the sustainable economy.

Textiles, construction, electronics and plastics would receive particular attention under the sustainable products policy. While there have long been prescribed specifications and requirements for the design of certain products (e.g. energy efficiency of electronic products), introducing strict requirements to all products more generally would represent a landmark change from current practice. The EGD highlights, in particular, the need to deal with the built-in obsolescence of devices.

Other specific elements of this wide-ranging policy include:

- extending existing "extended producer responsibility" requirements (which put responsibility for dealing with waste products upon the producer); and
- funding support for clean energy technologies such as clean hydrogen, fuel cells and other alternative fuels, energy storage and CCUS, and low-carbon industrial processes such as zero-carbon steel-making.

The EGD seeks to place 'digital transformation' at the heart of the circular economy given, on the one hand, the ability of digital technologies to assist in pursuing low-carbon policies (e.g. through monitoring and control technologies) and, on the other, the need to ensure that the environmental impacts of the digital economy itself are managed (e.g. through the proliferation of data centres).

A new Biodiversity Strategy

The EGN proposes ramping up action on biodiversity loss, with a new Biodiversity strategy by March 2020. Internationally, the Commission wishes to boost global action on biodiversity loss by proposing global targets for biodiversity protection. Looking inward, the Commission will consider increasing the coverage of protected sites within its Natura 2000 Network, and new measures to help Member States restore damaged ecosystems. A new EU Forest Strategy would also be prepared, focusing on helping Member States protect and restore their forests.

Zero-pollution environment

The EGD contains a proposal for a 'zero-pollution action plan' to be prepared in 2021. While this seems a worthy objective, the particular measures to accompany it seem a little more targeted and/or pragmatic. For example: measures to address pollution from microplastics, chemicals and pharmaceuticals, and a review of pollution control measures for industrial installations.

Of particular note are plans to align air quality standards more closely with World Health Organisation standards – this could result in some considerable tightening of air quality standards for some substances.

The Commission will also prepare a chemicals strategy for sustainability in Summer 2020, aimed at better protecting against human exposure to chemicals, and the substitution of more hazardous chemicals.

Financing the transition

The Commission establishes the EGD as a key element of its plan to implement the United Nations 2030 Agenda and the Sustainable Development Goals. In this context, the EGD focuses on the need for a 'just transition' to ensure that regions and sectors most affected by the transition to the green economy will have access to funding from the EU budget and from the European Investment Bank (which recently announced a major increase in its climate-related funding plans).

Given the estimated €260 billion annual investment needed to finance EU 2030 climate and energy targets, the EGD highlights the particular role of private sector finance and capital, noting that a renewed sustainable finance strategy will be published in Q3 2020. There is little new in the EGD on private finance for those who have followed recent developments of the EU Sustainable Finance Action Plan (see our publication [Growing the Green Economy](#)), except to note that the Commission will review the Non-Financial Reporting Directive during 2020 with a view to ensuring that investors are fully apprised of the sustainability of their investments.

Final Comment

The Annex to this note shows the sizeable ambition of the EGD through a large list of required actions which permeate all sectors of the EU economy, although the detail remains to be fleshed out over the next two years. Achieving this major work programme without affecting the health of the EU economy will require the Commission to make unprecedented efforts to adopt a joined-up approach to ensure that each initiative is effective and cost-efficient, and that the environmental, social and economic impacts fall fairly throughout society. The EGD proposes a 'green oath', requiring each legislative initiative to be accompanied by an explanatory statement setting out how it 'does no harm' and that the proposal is framed in the most effective and least burdensome way. In the circumstances, this seems a sensible add-on to the current practice of producing 'impact assessments' for initiatives.

With a new Commission and a new reset of climate and environmental policy for the EU, it can only be hoped that political willingness and drive among Member States matches the level of ambition shown in the EGD.



Appendix – Key actions in the EGD*

Actions	Indicative Timetable ¹
Climate ambition	
Proposal on a European 'Climate Law' enshrining the 2050 climate neutrality objective	March 2020
Comprehensive plan to increase the EU 2030 climate target to at least 50% and towards 55% in a responsible way	Summer 2020
Proposals for revisions of relevant legislative measures to deliver on the increased climate ambition, following the review of Emissions Trading System Directive; Effort Sharing Regulation; Land use, land use change and forestry Regulation; Energy Efficiency Directive; Renewable Energy Directive; CO ₂ emissions performance standards for cars and vans	June 2021
Proposal for a revision of the Energy Taxation Directive	June 2021
Proposal for a carbon border adjustment mechanism for selected sectors	2021
New EU Strategy on Adaptation to Climate Change	2020/2021
Clean, affordable and secure energy	
Assessment of the final National Energy and Climate Plans	June 2020
Strategy for smart sector integration	2020
'Renovation wave' initiative for the building sector	2020
Evaluation and review of the Trans-European Network – Energy Regulation	2020
Strategy on offshore wind	2020
Industrial strategy for a clean and circular economy	
EU Industrial strategy	March 2020
Circular Economy Action Plan, including a sustainable products initiative and particular focus on resource intense sectors such as textiles, construction, electronics and plastics	March 2020
Initiatives to stimulate lead markets for climate neutral and circular products in energy intensive industrial sectors	From 2020
Proposal to support zero carbon steel-making processes by 2030	2020
Legislation on batteries in support of the Strategic Action Plan on Batteries and the circular economy	October 2020
Propose legislative waste reforms	From 2020
Sustainable and smart mobility	
Strategy for sustainable and smart mobility	2020
Funding call to support the deployment of public recharging and refuelling points as part of alternative fuel infrastructure	From 2020
Assessment of legislative options to boost the production and supply of sustainable alternative fuels for the different transport modes	From 2020
Revised proposal for a Directive on Combined Transport	2021
Review of the Alternative Fuels Infrastructure Directive and the Trans European Network – Transport Regulation	2021
Initiatives to increase and better manage the capacity of railways and inland waterways	From 2021
Proposal for more stringent air pollutant emissions standards for combustion-engine vehicles	2021

¹ The Commission's work programme for 2020 will provide further clarity on the timing of relevant actions announced for 2020

Actions	Indicative Timetable ¹
Greening the Common Agricultural Policy/'Farm to Fork' Strategy	
Examination of the draft national strategic plans, with reference to the ambitions of the European Green Deal and the Farm to Fork Strategy	2020-2021
'Farm to Fork' Strategy Measures, including legislative, to significantly reduce the use and risk of chemical pesticides, as well as the use of fertilizers and antibiotics	Spring 2020 2021
Preserving and protecting biodiversity	
EU Biodiversity Strategy for 2030	March 2020
Measures to address the main drivers of biodiversity loss	From 2021
New EU Forest Strategy	2020
Measures to support deforestation-free value chains	From 2020
Towards a zero-pollution ambition for a toxic free environment	
Chemicals strategy for sustainability	Summer 2020
Zero pollution action plan for water, air and soil	2021
Revision of measures to address pollution from large industrial installations	2021
Mainstreaming sustainability in all EU policies	
Proposal for a Just Transition Mechanism, including a Just Transition Fund, and a Sustainable Europe Investment Plan	January 2020
Renewed sustainable finance strategy	Autumn 2020
Review of the Non-Financial Reporting Directive	2020
Initiatives to screen and benchmark green budgeting practices of the Member States and of the EU	From 2020
Review of the relevant State aid guidelines, including the environment and energy State aid guidelines	2021
Align all new Commission initiatives in line with the objectives of the Green Deal and promote innovation	From 2020
Stakeholders to identify and remedy incoherent legislation that reduces the effectiveness in delivering the European Green Deal	From 2020
Integration of the Sustainable Development Goals in the European Semester	From 2020
The EU as a global leader	
EU to continue to lead the international climate and biodiversity negotiations, further strengthening the international policy framework	From 2019
Strengthen the EU's Green Deal Diplomacy in cooperation with Member States	From 2020
Bilateral efforts to induce partners to act and to ensure comparability of action and policies	From 2020
Green Agenda for the Western Balkans	From 2020
Working together – a European Climate Pact	
Launch of the European Climate Pact	March 2020
Proposal for an 8 th Environmental Action Programme	2020

* Reproduced from the Annex to the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – The European Green Deal. Brussels, 11.12.2019. COM(2019) 640 final

CONTACTS



Nigel Howorth
Practice Area Leader
Real Estate
London
T: +44 20 7006 4076
E: nigel.howorth@
cliffordchance.com



Kirsty Souter
Senior Associate
London
T: +44 20 7006 4178
E: kirsty.souter@
cliffordchance.com



Andreas Formosa
Senior Associate
London
T: +44 20 7006 4421
E: andreas.formosa@
cliffordchance.com



Dan Neidle
Partner
London
T: +44 20 7006 8811
E: dan.neidle@
cliffordchance.com



Michael Coxall
Knowledge Director
London
T: +44 20 7006 4315
E: michael.coxall@
cliffordchance.com

OUR INTERNATIONAL NETWORK 32 OFFICES IN 21 COUNTRIES



Abu Dhabi
Amsterdam
Barcelona
Beijing
Brussels
Bucharest
Casablanca
Dubai
Düsseldorf
Frankfurt
Hong Kong
Istanbul

London
Luxembourg
Madrid
Milan
Moscow
Munich
Newcastle
New York
Paris
Perth
Prague
Rome

São Paulo
Seoul
Shanghai
Singapore
Sydney
Tokyo
Warsaw
Washington, D.C.

Riyadh*

*Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh
Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

C L I F F O R D

C H A N C E

This publication does not necessarily deal with every important topic nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2019

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571
Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications.

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or contact our database administrator by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ.

Abu Dhabi • Amsterdam • Barcelona
Beijing • Brussels • Bucharest
Casablanca • Dubai • Düsseldorf
Frankfurt • Hong Kong • Istanbul
London • Luxembourg • Madrid
Milan • Moscow • Munich • Newcastle
New York • Paris • Perth • Prague
Rome • São Paulo • Seoul • Shanghai
Singapore • Sydney • Tokyo • Warsaw
Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.