

# EU Green Deal & AgriFood

## An EU lawyer's perspective

*Darren Abrahams*

16 July 2021

 ABA AMERICAN BAR ASSOCIATION

INTERNATIONAL LAW SECTION

### The EU's Green Deal: Good Deal or Bad Deal for Food and Agriculture?

Presented by the ABA International Law Section, Food, Agriculture & Cannabis Committee

Cosponsored by the Ag Management Committee, Pesticides, Chemical Regulation Committee, and the ABA International Law Section, The International Trade Committee

# Darren Abrahams



[dabrahams@steptoe.com](mailto:dabrahams@steptoe.com)

*"exceptional expertise on EU regulations on chemicals...and a great ability to understand the complexity of businesses."*

*"When it comes to things like REACH and chemical law, he is the best"*

**Chambers & Partners Europe, 2019 and 2020**

- **English barrister, *Avocat* at the Brussels Bar**, partner resident in Brussels.
- Darren enables clients throughout the chemicals and life sciences supply chain to **get and keep their products on the EU market**.
- He focuses on **defence of products** through strategic advice, **advocacy** before institutions and agencies, and **litigation** before EU and national courts and tribunals.
- He has a **wealth of experience with EU regulation** of biocidal products, plant protection products (agrochemicals), REACH, CLP, GM food and feed, cosmetics, and endocrine disruptors.
- Chambers & Partners **Europe-wide Regulatory (2020): Agro/Food and Environment Legal Rankings: top tier practitioner in both, and Steptoe listed as a band 1 firm.**

- **Green Deal**
  - Tools & Approaches
  - Review of 2020/21 Work Programme New Initiatives
  - Highlights: zero pollution & global leadership
- **Legal Tool Box/Anchors**
- **Case studies:**
  - Biodiversity Strategy
  - Farm to Form Strategy

# Green Deal: Headline Goals & How to Achieve Them

The European Green Deal ([COM\(2019\) 640 final](#)) is a roadmap for making the EU's economy sustainable (“tackling climate and environmental-related challenges”):

- no net emissions of greenhouse gases by 2050
- economic growth decoupled from resource use
- no person and no place is left behind



*“consistent use of all policy levers: regulation and standardisation, investment and innovation, national reforms, dialogue with social partners and international cooperation...”*

*New measures on their own will not be enough to achieve the European Green Deal’s objectives. In addition... the Commission will work with the Member States to **sensure that current legislation and policies relevant to the Green Deal are enforced and effectively implemented** tep up the EU’s efforts to.*

*“rethink policies” on food and agriculture (and many more areas).*

**A PROCESS, NOT A MOMENT.**

# Adjusted Commission Work Programme 2020 (27 May 2020)

COM(2020) 440 final

## Annex I: New initiatives<sup>1</sup>

No.	Policy objective	Initiatives	Status / Change <sup>2</sup>
<b>A European Green Deal</b>			
1.	<b>The European Green Deal</b>	<b>Communication on the European Green Deal</b> (non-legislative, Q4 2019); <b>European Climate Law enshrining the 2050 climate neutrality objective</b> (legislative, Article 192(1) TFEU, Q1 2020); <b>The European Climate Pact</b> (non-legislative, Q3 2020)	adopted adopted <i>Q4 2020</i>
2.	<b>Financing the sustainable transition</b>	<b>European Green Deal Investment Plan</b> (non-legislative, Q1 2020); <b>Just Transition Fund</b> (legislative, Article 175 TFEU, Q1 2020); <b>Renewed Sustainable Finance Strategy</b> (non-legislative, Q3 2020); <b>Review of the Non-Financial Reporting Directive</b> (legislative, incl. impact assessment, Article 114 TFEU, Q4 2020)	adopted adopted <i>Q4 2020</i> <i>Q1 2021</i>
3.	<b>Commission contribution to COP26 in Glasgow</b>	<b>2030 Climate Target Plan</b> (non-legislative, incl. impact assessment, Q3 2020); <b>New EU Strategy on Adaptation to Climate Change</b> (non-legislative, Q4 2020); <b>New EU Forest Strategy</b> (non-legislative, Q4 2020)	<i>Q3 2020</i> <i>Q1 2021</i> <i>Q1 2021</i>
4.	<b>Sustainability of food systems</b>	<b>'Farm to Fork' Strategy</b> (non-legislative, Q1 2020)	adopted
5.	<b>Decarbonising energy</b>	<b>Strategy for smart sector integration</b> (non-legislative, Q2 2020); <b>Renovation wave</b> (non-legislative, Q3 2020); <b>Offshore renewable energy</b> (non-legislative, Q4 2020)	<i>Q2 2020</i> <i>Q3 2020</i> <i>Q4 2020</i>
6.	<b>Sustainable production and consumption</b>	<b>New Circular Economy Action Plan</b> (non-legislative, Q1 2020); <b>Empowering the consumer for the green transition</b> (legislative, incl. impact assessment, Article 114 TFEU, Q4 2020)	adopted <i>Q2 2021</i>
7.	<b>Protecting our environment</b>	<b>EU Biodiversity Strategy for 2030</b> (non-legislative, Q1 2020); <b>8<sup>th</sup> Environmental Action Programme</b> (legislative, Article 192(3) TFEU, Q2 2020); <b>Chemicals strategy for sustainability</b> (non-legislative, Q3 2020)	adopted <i>Q4 2020</i> <i>Q3 2020</i>

<sup>1</sup> In this annex, the Commission provides further information, as far as available, on the initiatives included in its Work Programme, in line with the Interinstitutional Agreement on Better Law-making. This information, which is provided in brackets next to each initiative, is indicative only and subject to change during the preparatory process, notably in view of the outcome of an impact assessment process.

<sup>2</sup> Whereas the column 'initiatives' contains the initial planned adoption dates included in the 2020 Commission Work Programme as adopted on 29 January 2020, this column contains the current, potentially revised planning. Timing in italics indicate a change, regular font indicates that the original timing has not changed.

1

No.	Policy objective	Initiatives	Status / Change <sup>2</sup>
8.	<b>Sustainable and smart mobility</b>	<b>Strategy for sustainable and smart mobility</b> (non-legislative, Q4 2020); <b>ReFuelEU Aviation - Sustainable Aviation Fuels</b> (legislative, incl. impact assessment, Article 100(2) TFEU and/or Article 192(1) TFEU, Q4 2020); <b>FuelEU Maritime - Green European Maritime Space</b> (legislative, incl. impact assessment, Article 100(2) TFEU and/or Article 192(1) TFEU, Q4 2020)	<i>Q4 2020</i> <i>Q4 2020</i> <i>Q4 2020</i>

# Adjusted Commission Work Programme 2020 (27 May 2020)

## Annex II: REFIT initiatives<sup>3</sup>

No.	Title	Simplification objective / potential (short explanation of the REFIT objective of the revisions, and simplification potential for evaluations and fitness checks)
13.	<b>Evaluation of Directive 2009/128/EC on the Sustainable Use of Pesticides</b>	This evaluation will look, <i>inter alia</i> , at the progress achieved by the Directive in reducing dependency on pesticides and stimulating the take-up of low-risk and non-chemical alternatives to pesticides. Simplification potential will also be considered, for example concerning the rules for inspection of pesticides application equipment and new official control rules.
15.	<b>Evaluation on authorisation of plant protection products and maximum residue levels for pesticides<sup>4</sup></b>	This evaluation covers the implementation and functioning of Regulation 1107/2009 on plant protection products and Regulation 396/2005 on maximum residue levels in all Member States since their applicability in June 2011 and September 2008, respectively. It proposes possible ways to enhance the implementation of the Regulations in order to simplify or strengthen the current regulatory framework, e.g. to address delays and increase transparency, improve the zonal system for authorisation and mutual recognition of authorisations, promote sustainable plant protection, low risk solutions and efficient risk mitigation, as well as to increase coherence and consistency between the Regulations and other EU legislation. The evaluation looks also into the issues raised in the <a href="#">REFIT Platform opinion XI.10.a</a> on Multiple use/Multiple source substances – Chlorate adopted on 7/6/2017 and in the <a href="#">REFIT Platform opinion XI.22.a</a> on the registration of plant protection products – adopted on 14/03/2019.

<sup>3</sup> This annex sets out the most significant revisions, evaluations and Fitness Checks the Commission will undertake, including evaluation work to follow up the Opinions of the REFIT Platform. They will be finalised by the end of 2020, apart from those initiatives marked with an asterix, which will be finalised at a later stage.

<sup>4</sup> The evaluation was published on 20 May 2020. [COM/2020/208 final](#) and [SWD/2020/87 final](#)

# Commission Work Programme 2021 (19 Oct 2020)

## Annex I: New initiatives<sup>1</sup>

COM(2020) 690 final

No.	Policy objective	Initiatives
<b>A European Green Deal</b>		
3.	<b>Biodiversity and toxic-free environment package</b>	<p>a) <b>Action plan for the development of organic production: on the way to 2030</b> (non-legislative, Q1 2021)</p> <p>b) <b>Minimising the risk of deforestation and forest degradation associated with products placed on the EU market</b> (legislative, incl. impact assessment, Q2 2021)</p> <p>c) <b>Zero pollution action plan for water, air and soil</b> (non-legislative, Q2 2021)</p> <p>d) <b>New legal framework on the restoration of healthy ecosystems</b> (legislative, incl. impact assessment, Article 192 TFEU, Q4 2021)</p>
7.	<b>Revision of the Regulation of the European Parliament and of the Council on Statistics on Agricultural Input and Output (SAIO)</b>	<p>SAIO is meant to cater for needs stemming from the Common Agricultural Policy post-2020 and the European Green Deal, in particular the Farm to Fork Strategy. The aim is to update agricultural statistics legislation, reduce the burden to provide data, take account of new data needs and ensure better comparability of collected data. It brings together under a common integrated legal frame:</p> <ul style="list-style-type: none"> <li>o agricultural production statistics including organic farming statistics</li> <li>o agricultural price statistics, and</li> <li>o statistics on plant protection products and on nutrients.</li> </ul> <p>Planned adoption date: Q1/2021; Legislative; Legal basis: Article 338 (1) of the TFEU. No impact assessment is envisaged.</p>
10.	<b>Revision of Regulation (EC) No 1831/2003 on additives for use in animal nutrition</b>	<p>The Feed Additives Regulation, adopted in 2003 sets out rules for authorising feed additives and placing them on the market. The evaluation performed identified factors that have hampered achievement of some objectives, consequently, a revision is required. In line with the action plan of the Farm to fork strategy, the main aim of the proposal is to contribute to a more sustainable food production system by establishing new criteria to promote the authorisation of feed additives with positive effects on animal welfare and on the environment. It will also build up mechanisms to promote innovation in feed additives, particularly those contributing to reducing the use of antibiotics, improving animal welfare and mitigating climate change effects. It also aims at streamlining the processes to gain efficiencies in risk assessment to bring innovative feed additives earlier to the market and reduce the administrative burden for authorisation holder applications.</p> <p>Planned adoption date: Q4/2021; Legislative; Legal basis: Articles 43 and 168(4)(b) of the TFEU. Impact assessment is envisaged.</p>

# Green Deal: Highlights for AgriFood Sector

[COM\(2019\) 640 final](#)

## A zero pollution ambition for a toxic-free environment

- Creating a toxic-free environment requires **more action to prevent pollution from being generated as well as measures to clean and remedy** it. To protect Europe's citizens and ecosystems, the EU needs to better monitor, report, prevent and remedy pollution from air, water, soil, and consumer products.
- The **natural functions** of ground and surface water must be **restored**. Commission will propose measures to address pollution... from new or particularly harmful sources of pollution such as chemicals. There is also a need to address the combined effects of different pollutants.
- **Chemicals strategy for sustainability:** will review how to use better the EU's agencies and scientific bodies to move to a process of 'one substance – one assessment' and to provide greater transparency when prioritising action to deal with chemicals. In parallel, the regulatory framework will need to rapidly reflect scientific evidence on the risk posed by endocrine disruptors, hazardous chemicals in products including imports, combination effects of different chemicals and very persistent chemicals.



# Green Deal: Highlights for AgriFood Sector

[COM\(2019\) 640 final](#)

## EU as a global leader

- **Trade policy can support the EU's ecological transition.** It serves as a platform to engage with trading partners on climate and environmental action... All chemicals, materials, food and other products that are placed on the European market must fully comply with relevant EU regulations and standards. **The EU should use its expertise in “green” regulation to encourage partners to design similar rules that are as ambitious as the EU's rules,** thus facilitating trade and enhancing environment protection and climate mitigation in these countries.

# Legal Tool Box/Anchors

# Legal Tool Box

- **Legal tools and issues are not confined to “a day in court”. Legal reasoning is an important aspect of:**
  - Pre-legislative/policy advocacy
  - Interpreting and applying the new rules
  - Shaping non-legally binding guidance
  - Shaping Implementing & Delegated Acts

**Countering the “free choices” policy and legislative mentality.**

- **Tool box may be used through multiple routes:**
  - Legal advocacy - EU and national
  - General Court & Court of Justice
  - European Ombudsman
  - National Courts

# Legal Tool Box Includes

- 1. Conferral on powers (via Treaty)**
  - a) Legal basis and adoption procedures
  
- 2. General Principles of EU law (Treaty & Caselaw):**
  - a) Subsidiarity
  - b) Proportionality
  - c) Duty to state reasons
  - d) Legal certainty
  - e) Duty to take all information into account
  - f) Right to Good Administration
  
- 3. Policy/Agreements**
  - a) Better Regulation Guidelines

# Decision Making Procedures

## Environmental Legal Basis, Art. 191/192

Generally QMV but Council Unanimity

(a) provisions primarily of a fiscal nature;

(b) measures affecting:

- town and country planning,

- quantitative management of water resources or affecting, directly or indirectly, the availability of those resources,

- **land use**, with the exception of waste management;

(c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

# Biodiversity Strategy

# Headlines Goals

“EU is not meeting some of its most important environmental objectives for 2020, such as the [Aichi targets](#) under the Convention on Biological Diversity.” (Green Deal Communication)

## The new EU-wide Biodiversity Strategy will:

- establish protected areas for at least:



30% of land in Europe



30% of sea in Europe

Plus stricter protections for 1/3 of already protected areas.



with stricter protection of remaining EU primary and old-growth forests legally binding nature restoration targets in 2021.

- restore degraded ecosystems at land and sea across the whole of Europe by:



increasing **organic farming and biodiversity-rich landscape features** on agricultural land.



halting and reversing the decline of **pollinators**



reducing the use and risk of pesticides by **50% by 2030**



restoring at least **25 000 km** of EU rivers to a free-flowing state



planting **3 billion** trees by 2030

*“The business case for biodiversity is compelling. Industry and **companies** rely on **genes, species, and ecosystem services as critical inputs for production...Over half of global GDP depends on nature and the services it provides, with three key economic sectors – construction, agriculture, and food and drink – all highly dependent on it”.***

*Biodiversity is also crucial for safeguarding EU and global food security...underpins healthy and nutritious diets... more than 75% of global food crop types rely on animal **pollination**.*

# Biodiversity Strategy for 2030

All new initiatives and proposals will be underpinned by the Commission's better regulation tools.

Based on public consultations and on the identification of the environmental, social and economic impacts, impact assessments will contribute to ensuring that all initiatives achieve their objectives in the most effective and least burdensome way and live up to a green oath to “do no harm”.



# Nature Restoration Plan: Highlights for AgriFood

- **coherent network of protected areas:** aim to agree the criteria and guidance for additional designations with Member States (**end of 2021**). MS will have until the **end of 2023** to demonstrate significant progress. **2024**, Commission will assess if on track to meet its 2030 targets or if stronger actions, including EU legislation, are needed.
- **legally binding** EU nature restoration **targets (2021)**. By 2030, significant areas of degraded and carbon-rich ecosystems are restored; habitats and species show no deterioration in conservation trends and status; and at least 30% reach favourable conservation status / show a positive trend.
- **decline in pollinators is reversed** (Review of [EU Pollinators initiative](#): **2020**).
- **risk and use of chemical pesticides is reduced by 50% and the use of more hazardous pesticides is reduced by 50%**. **No chemical pesticide use in sensitive areas e.g. urban green areas.** (Revision of the Sustainable Use of Pesticides Directive and enhance Integrated Pest Management provisions: **Q1, 2022** – also in Farm to Fork Strategy).

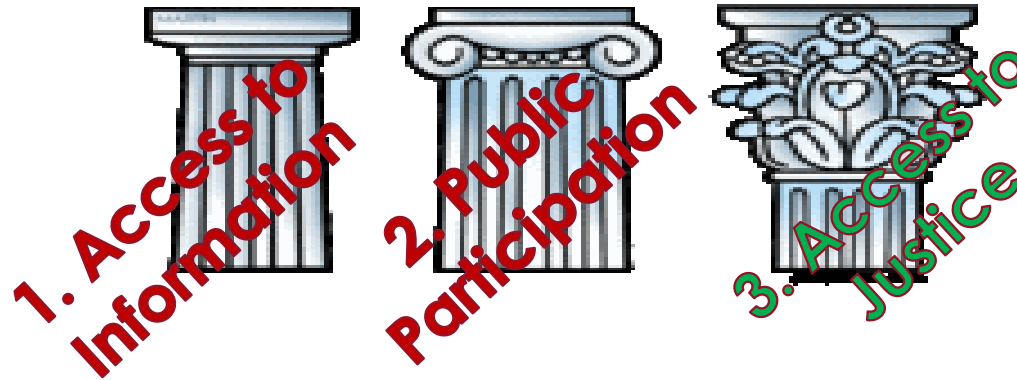
# Nature Restoration Plan: Highlights for AgriFood Sector

- to get at least 25% of agricultural land under organic farming management (compared to [7% in 2017](#)) by **2030** (also in Farm to Farm Strategy). 2020 Action Plan for Organic Farming for 2021-2026.
- Revision of the Thematic Strategy for Soil Protection (**2021**) - remediation of contaminated soil sites.

# Governance, Enforcement & Market Tools: Highlights for AgriFood Sector

- **Commission will put in place a monitoring and review mechanism.** Clear set of agreed indicators to enable regular progress assessment/ corrective action. **The Commission will assess the progress in 2023, and consider whether a legally binding approach to governance is needed.**
- **Market signaling:** Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment - a delegated act under the **Taxonomy Regulation** to establish a common classification of economic activities that substantially contribute to protecting and restoring biodiversity and ecosystems (**2021**).
- **Commission will strive to improve compliance** assurance, working closely with Member States and European networks of environmental agencies, inspectors, auditors, police, prosecutors and judges. In addition, the **Commission will support civil society's role as a compliance watchdog and will engage with Member States to improve access to justice in national courts in environmental matters for individuals and NGOs. It will also broaden standing for NGOs by proposing a revision of the Aarhus Regulation.**

# Access to Justice on Environmental Decisions



[Roadmap on Access to Justice](#) in environmental matter proposed **Q3 2020** legislative proposal:

- broaden scope of the [review mechanism](#) (Art. 10 of Aarhus Regulation) to include non-legislative regulatory acts,
- widen administrative acts and omissions covered by the internal review mechanism are those that contravene provisions of environmental law in line with the Aarhus Convention (not just “individual scope” but also of “general scope”);
- allowing more time for the procedural steps for NGOs and the European Union Institutions on the review mechanism

**New Commission Communication** on access to justice in environmental matters in MS courts (including against national implementing measures of the relevant EU non-legislative acts of general scope).

# Farm to Fork Strategy

# From 'Farm to Fork': designing a fair, healthy and environmentally-friendly food system



**“European food... should now also become the global standard for sustainability... Food production still results in air, water and soil pollution, contributes to the loss of biodiversity and climate change, and consumes excessive amounts of natural resources...”**  
(Green Deal Communication)

**Communication** From 'Farm to Fork': designing a fair, healthy and environmentally-friendly food system, describes itself as **“at the heart of the Green Deal”** and **“central to the Commission’s agenda to achieve”** the UN Sustainable Development Goals”.

# Farm to Fork Strategy: Highlights for AgriFood Sector

- study of new genomic techniques (including biotechnology) to improve sustainability along the food supply chain, *because* potential role for “new innovative techniques and the development of bio-based products” to “accelerate the process of reducing dependency on pesticides”
- measures to facilitate the registration of seed varieties, including for organic farming, and to ensure easier market access for traditional and locally-adapted varieties
- clarifying the competition rules for collective initiatives that promote sustainability in supply chains **Q3 2022**