



Veblen Institute for Economic Reforms

Mirror measures: key tools for implementing the European Green Deal

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Initial review and outlook on the 2019-2024 European mandate

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SUMMARY

In the European Green Deal presented in late 2019, the EU set a target of climate neutrality by 2050 and “*economic growth decoupled from resource use*”. A whole series of key legislative texts have already been adopted and various major projects are in progress. But to achieve its stated goals, the EU must also mobilise its trade policy and tackle the difference in production standards between European and imported products through the introduction of mirror measures. The aim of these mirror measures, incorporated into European legislation, is to make access to the EU market conditional on compliance with certain essential European standards, particularly in terms of sustainability, the environment, health and animal welfare.

Isolated examples of such measures have existed for a long time, mainly in the agricultural sector. Since the launch of the Green Deal, a paradigm shift has been under way, as demonstrated by the adoption of the carbon border adjustment mechanism, the regulation on imported deforestation, and the regulation on neonicotinoid residues. This paper presents a status report on the mirror measures already in place or under development across various economic sectors in the context of the European Green Deal. It identifies other sector-specific policies and legislation in which such measures could be adopted by the end of the European mandate or during the next. In the future, the relevance and usefulness of a section dedicated to the treatment of imported goods and services should be systematically considered for all major European texts implementing the Green Deal.

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MIRROR MEASURES: KEY TOOLS FOR IMPLEMENTING THE GREEN DEAL. INITIAL REVIEW AND OUTLOOK ON THE 2019-2024 EUROPEAN MANDATE

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The Veblen Institute for Economic Reform is a non-profit think tank that promotes public policy and civil society initiatives in favour of the ecological transition. We believe that the current economic model is profoundly unsustainable and must be transformed in the spirit of social justice and respect for planetary boundaries.

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RECOMMENDATIONS

- Systematic consideration of the relevance and usefulness of a section dedicated to the treatment of imported goods and services for all major European texts implementing the Green Deal (in impact studies, consultations and the drafting of legislative proposals).
- Clarification of responsibilities and creation of more robust means of monitoring compliance with environmental and health standards for imported products.
- Development of customs nomenclature to differentiate products according to their production methods, for example organically-farmed products.
- Effective implementation of mirror measure on veterinary medicinal products in livestock farming and adoption of mirror measures for the new animal welfare provisions.
- Short-term reduction of maximum residue limits (MRLs) to the detection threshold for all hazardous pesticides banned in the EU and extension of MRL use to all agricultural production (including crops intended solely for animal feed, energy or ornamental use). In the medium term, adoption of a total import ban on products treated with pesticides banned in the EU.
- Banning of EU production for export of banned pesticides whose use is prohibited in the EU due to their danger to health or ecosystems.
- Adoption of ambitious new rules on sustainable food systems, animal welfare and eco-design of products, including mirror measures.

1. A PARADIGM SHIFT UNDER WAY

The European Green Deal sets out the European Union's roadmap for achieving climate neutrality by 2050 and "economic growth decoupled from resource use"³. The European Commission (EC) plans to mobilise all EU policies to achieve this objective⁴. It also recognises that *"the environmental ambition of the Green Deal will not be achieved by Europe acting alone. The drivers of climate change and biodiversity loss are global and not limited by national borders. The EU can use its influence, expertise and financial resources to mobilise its neighbours and partners to join it on a sustainable path"*⁵.

In the area of trade policy, the Commission undertakes to:

- Strengthen the sustainability of EU trade agreements, particularly with regard to enhancing climate change action⁶.
- To ensure that *"all chemicals, materials, food and other products that are placed on the European market (...) fully comply with the relevant EU regulations and standards"*⁷.

But production and marketing standards are not necessarily the same, and the Green Deal does not take into consideration the urgent need to remedy the difference in production standards between European and imported products.

This problem is well-documented in the agricultural sector, where the European legislation applicable to livestock production methods and pesticides in particular leads to a differential treatment between food produced in the EU and imported food⁸ (see point 1.2).

³ [Communication](#) from the EC, "The European Green Deal", COM (2019) 640 final, 11 December 2019. In this Communication, the EC sets out a new growth strategy to transform the EU into *"a fair and prosperous society, with a modern, resource-efficient and competitive economy"*, guaranteeing the end of net greenhouse gas emissions by 2050 and economic growth decoupled from resource use.

⁴ *Ibid.*, p. 3.

⁵ *Ibid.*, pp. 2-3.

⁶ *Ibid.* p.25. See the Veblen Institute study, [Making trade agreements conditional on climate and environmental commitments](#) (June 2023) in which we examine how aligned these agreements are with international commitments to combat climate change and protect the environment. The Institute has also put forward a number of concrete proposals for progress in this area. Firstly, elevate, in an effective manner, the fight against climate change and environmental protection to the level of essential elements of EU trade agreements. Secondly, make tariff preferences conditional on compliance with sustainability criteria for environment- and climate-sensitive products. And finally, interpret the key principles of WTO law in such a way as to allow states to legitimately differentiate products on the basis of the sustainability of their production processes.

⁷ *Ibid.* pp. 25-26.

⁸ This difference has been noted in the various reports of the expert panels commissioned by the French government to examine the health and environmental impacts of the EU's trade agreements with Canada and the Mercosur countries. See K. Schubert et al., [L'impact de l'Accord Économique et](#)

It is illusory to hope to achieve the Green Deal’s objectives without correcting this difference in standards. The EU needs to implement a comprehensive reciprocity approach by using mirror measures, for which the Veblen Institute has been advocating for several years⁹.

The term “mirror measures” refers to measures integrated in European legislation which **condition access to the EU market on compliance with certain essential European standards, particularly in the areas of sustainability, the environment, health and animal welfare**. Mirror measures provide a solution to a number of challenges by:

- Safeguarding the integrity of the EU’s environmental obligations against the risk of weakening European standards.
- Mitigating the impact of the externalisation and export of unsustainable practices to third countries¹⁰.
- Contributing to the improvement of production standards in the EU’s trading partners¹¹.
- Encouraging the adoption of stricter international standards.

Certain measures of this type have long existed in the agricultural sector, such as the ban on hormone-treated beef in imported animal products enacted in 1996, or the requirements imposed on imported products to be marketed as organic on the EU market. But these remain isolated measures.

[Commercial Global entre l’Union européenne et le Canada \(AECG/CETA\) sur l’environnement, le climat et la santé](#) [The impact of the Comprehensive Economic and Trade Agreement between the European Union and Canada (CETA) on the environment, climate and health], Report to the Prime Minister, September 2017; See S. Ambec et al, Report to the Prime Minister, [Dispositions et effets potentiels de la partie commerciale de l’Accord d’Association entre l’Union européenne et le Mercosur en matière de développement durable](#) [Provisions and potential effects of the trade part of the Association Agreement between the European Union and Mercosur on sustainable development], April 2020. The Veblen Institute, the FNH and Interbev subsequently published a detailed report on this subject, listing the regulatory discrepancies in livestock farming and for certain crops, see Veblen Institute, FNH, Interbev, [Mondialisation. Comment protéger nos agriculteurs et l’environnement ?](#), [Globalisation. How can we protect our farmers and the environment?], March 2021.

⁹ See Veblen Institute, [Mondialisation : Comment protéger les agriculteurs et l’environnement ?](#) [Globalisation: How can we protect farmers and the environment?], March 2021; Veblen Institute, FNH, EEB, [Neonicotinoid pesticides: how can European mirror measures be made more ambitious?](#), June 2023.

¹⁰ This risk was identified in “[A Farm to Fork Strategy](#)”, Communication from the EC, COM/2020/381 final, p. 4

¹¹ This is an objective mentioned in the Green Deal: “*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*” ([Communication](#) from the EC, “The European Green Deal”, *op. cit.*, pp. 25-26).

Since the launch of the Green Deal, a paradigm shift has been under way, with the adoption of the carbon border adjustment mechanism, the regulation on imported deforestation and the regulation on residues of two neonicotinoids. The adoption of these measures by the EU was met by an outcry at the WTO¹² (see Annex 2). Yet they do not even come close to resolving all the main regulatory discrepancies.

In order to make further progress in this area, mirror measures need to be rolled out across all relevant sector-specific policies and legislation that implement the Green Deal objectives, including the Farm to Fork Strategy¹³, the Industrial Strategy for Europe¹⁴, the Circular Economy Action Plan¹⁵, and the Chemicals Strategy for Sustainability¹⁶.

Requirements for importing products are currently implemented using **different methods** depending on the goods and services in question and the issues involved:

- **EU border controls** on certain products.
- **Controls and audits in producer countries for specific sectors.**
- **EU recognition of equivalence or conformity** with European requirements for production processes in third countries.
- **Mandatory due diligence and traceability mechanisms** for operators importing products into the EU market.

The complexity of value chains sometimes makes enforcement difficult. Furthermore, existing control and traceability systems need to be made more robust, for example in

¹² At the meeting of the WTO Committee on Trade and Environment on 14 March 2023, the EU's carbon border adjustment mechanism and the deforestation regulation were roundly rejected by India, backed up by other Member States such as Brazil, Uruguay, Paraguay, Colombia, Nicaragua, Kenya, China and Russia. Industrialised countries such as Japan and Korea, among others, also expressed their concerns. See the document submitted by India, Job/TE/78 "Concerns on Emerging Trends of Using Environmental Measures as Protectionist Non-Tariff Measures". Access to the document is currently restricted, but an analysis is available via this link: [WTO: India galvanizes South over North's unilateral environment measures](#)

¹³ Communication from the EC, [A Farm to Fork Strategy](#) *op. cit.*

¹⁴ Communication from the EC, [A New Industrial Strategy for Europe](#), COM (2020) 102 final, 10.3.2020

¹⁵ Communication from the EC, [A new Circular Economy Action Plan - For a cleaner and more competitive Europe](#), COM (2020)98 final, 11.3.2020.

¹⁶ Communication from the EC, [Chemicals Strategy for Sustainability. Towards a Toxic-Free Environment](#), COM (2020) 667 final, 14.10.2020. Mirror measures could also be introduced in other sector-specific policies, such as the [Sustainable and Smart Mobility Strategy](#) (Communication EC, SWD (2020) 331 final, 9.12.2020), the [EU Biodiversity Strategy for 2030](#) (Communication EC, COM (2020) 380 final, 20.5.20), the [New EU Forest Strategy for 2030](#) (Communication EC, COM (2021) 572 final, 16.7.2021), the [EU Action Plan: Towards Zero Pollution for Air, Water and Soil](#) (EC Communication COM (2021) 400 final, 12.5.2021), and the strategy for [Shaping Europe's Digital Future](#) (Communication EC COM (2020) 67 final, 19.2.2020).

the food trade, where a number of shortcomings have been identified¹⁷: persistent disparities in the application of the law across different Member States in terms of official controls and the penalties applied; the difficulty faced by food chain operators in demonstrating total product traceability throughout the chain; the difficulties for European and national authorities in guaranteeing the traceability and safety of foodstuffs; and the lack of EU resources for conducting controls on foodstuffs imported from third countries.

To address these issues, more resources need to be directed towards health safety and border controls. More generally, **the revision of the EU Customs Code provides an opportunity to strengthen or create tools that will enable customs authorities to fully implement mirror measures taken to address health or environmental protection issues.** Certain categories of products could then be distinguished in the customs nomenclature based on their production methods, for example organic farming products.

This paper presents a status report on existing mirror measures and those currently under development. It is designed to be updated based on any discussions it may prompt.

¹⁷ Commission Staff working document, Executive Summary of the REFIT Evaluation of the General Food Law Regulation 178/2002. See also EC, DG Health, [Final report](#) of an audit carried out in the Netherlands from 8 November to 2 December 2022 in order to evaluate the system of official controls on animals and goods entering the EU and verification of compliance of border control posts with EU requirements, DG(SANTE) 2022-7428, 11 August 2023: in this recent evaluation report on the Dutch system of official controls on animals and goods entering the EU, the EU's DG for Health and Food Safety shows that these controls are not always carried out in accordance with EU rules. The report highlights the existence of systematic shortcomings in the implementation of controls on goods of non-animal origin, particularly with regard to the performance of documentary checks, the locations at which these checks are carried out and the frequency of identity and physical checks. It also points out the ineffectiveness of the internal audit and control verification system. This ineffectiveness contributes to a situation where the inspection centres and control points visited by the audit team did not comply with the minimum requirements. These shortcomings compromise the competent authority's ability to provide assurances that only animals and goods that comply with EU rules enter the EU. See also, Veblen Institute, FNH, EEB, [Neonicotinoid pesticides: how can European mirror measures be made more ambitious?](#), June 2023



2. STATUS REPORT: THE USE OF MIRROR MEASURES IS BECOMING MORE WIDESPREAD

Table 1: Summary of existing mirror measures

Mirror measures	Implementation schedule	Justification	Means of implementation
Ban on EU market access for animal products treated with growth hormones Directive 96/22/EC of 29 April 1996	In force since 1996	EU consumer health	Dedicated supply chain for EU market Directive 96/22/EC → Dedicated supply chains for EU market controlled by the producer country's health authorities: control of production line plans; accreditation of slaughterhouses meeting European standards → Audits carried out in producer countries by the EC (DG Health)
Marketing of imported products as organic in the EU	Various texts over the last 30 years: Regulation (EEC) 2092/91, Regulation (EC) 834/2007, Regulation (EU) 2018/848.	Protection of the environment, biodiversity and animal welfare	Compliance with rules recognised as equivalent to EU rules Regulation (EU) 2018/848, which came into force on 1 January 2022. → Compliance with third-country production and control rules recognised (under an international agreement) as equivalent to EU rules: inspections and certification of organic products carried out by the authorities of the country of origin.

			<ul style="list-style-type: none"> → For organic products from other third countries: compliance with EU organic production rules + certificate of conformity issued by the inspection authorities designated by the EC.
Application of European slaughter rules to imported animal products Regulation (EC) 1099/2009	2013	Animal welfare	<p style="text-align: center;">Dedicated supply chain for EU market</p> <p>Regulations (EC) 1099/2009 and (EC) 854/2004 Meat and other products from slaughtered animals may only be imported into the EU if:</p> <ul style="list-style-type: none"> → they have been dispatched from establishments appearing on lists drawn up and updated in accordance with the above regulations. Listing criteria include: the establishment’s compliance with European requirements or those defined as equivalent; surveillance by an official inspection service in the third country; this inspection service must have the power to prevent establishments from exporting to the EU if they fail to comply with the relevant requirements. → Imported meat is accompanied by a health certificate and a document certifying compliance with requirements that are at least equivalent to EU requirements.
Ban on EU market access for animals and animal products treated with growth-promoting antibiotics Regulation (EU)	Unknown Awaiting implementing acts	Action on antibiotic resistance ¹⁸	<p style="text-align: center;">Dedicated supply chain for EU market</p> <p>Regulation (EU) 2019/6, Delegated Regulation (EU) 2023/905 Conditions for entering the EU market:</p>

¹⁸ The EU’s action on antibiotic resistance is part of the “One Health” plan, which covers public, animal and environmental health.

2019/6			<ul style="list-style-type: none"> → Products must originate from a third country or region of a third country that appears on the list of approved third countries; and → Products must be accompanied by an official certificate of conformity attesting that the consignment complies with the prohibition.
<p>Ban on EU market access for products containing residues of clothianidin and thiamethoxam</p> <p>Regulation (EC) 2023/334</p>	<p>Application no earlier than 7 March 2026</p>	<p>Protection of the environment and biodiversity</p>	<p>Official controls on agricultural/food products and pesticide residues</p> <p>General legislation on controls of imported agricultural and food products (Regulation (EU) 2017/625)</p> <ul style="list-style-type: none"> → Controls at Member State level: documentary and physical checks at border posts; issue of a common health entry document for imported goods. → Controls at EU level: controls and audits carried out in Member States and third countries (verification of compliance or equivalence; data collection, etc.) <p>Rules on the control of maximum residue limits (Regulation (EC) 396/2006)</p> <ul style="list-style-type: none"> → Controls at Member State level: definition of a multiannual control programme; sampling; controls at the point of supply to consumers. → Controls at EU level: <ul style="list-style-type: none"> ◆ Multiannual EC controls ◆ EFSA: report on controls in Member States.
<p>Carbon border adjustment mechanism</p> <p>Regulation (EU)</p>	<p>Transitional system from 1 October 2023</p> <p>Permanent system</p>	<p>Combating climate change and carbon leakage</p>	<p>Reporting obligations and obligation to purchase carbon certificates</p> <p>Regulation (EU) 2023/956</p> <p>Transitional system: obligations for importers of goods covered (iron, steel,</p>

2023/956	<p>from 1 January 2026</p> <p>End of free quotas by 2034</p>		<p>cement, aluminium, fertilisers, electricity, hydrogen and certain end products such as screws and bolts, etc.) from 1 October 2023:</p> <ul style="list-style-type: none"> → Declaration of direct and indirect GHG emissions linked to their imports <p>Permanent system: obligations for importers of goods covered from 1 January 2026:</p> <ul style="list-style-type: none"> → Annual declaration of the quantities of goods imported into the EU during the year N-1 and embedded GHG emissions. → Obligation to purchase carbon certificates equivalent to the price of carbon that would have been paid if the products had been manufactured in accordance with European rules.
<p>Ban on EU market access for products that have caused deforestation Regulation (EU) 2023/1115</p>	<p>Applied to companies from 30 December 2024</p>	<p>Combating climate change and biodiversity loss</p>	<p style="text-align: center;">Due diligence obligations imposed on operators</p> <p>Regulation (EU) 2023/1115</p> <p>Conditions to be met before timber, palm oil, soya, coffee, cocoa, rubber and beef (and products derived from these raw materials) can be placed on the EU market or exported from the EU market:</p> <ul style="list-style-type: none"> → Be deforestation-free, i.e. produced on land that has not been subject to deforestation or forest degradation after 31.12.2020; → Have been produced in accordance with the relevant legislation of the country of production; → Be covered by a due diligence statement, required from operators wishing to import these products into the EU or export them from

			the EU.
Environmental requirements for placing imported batteries on the market Regulation (EU) 2023/1542	New environmental requirements, to be implemented in stages	Protection of the environment	<p style="text-align: center;">Due diligence obligations imposed on importers</p> <p>Regulation (EU) 2023/1542 + future delegated acts Before placing batteries on the EU market, importers must ensure that:</p> <ul style="list-style-type: none"> → The manufacturer has complied with a number of the environmental requirements set out in the regulation (limited quantities of hazardous substances; mandatory “carbon footprint declaration”; labelling and marking of batteries; compliance with minimum values for electrochemical performance and durability parameters; digital battery passport; minimum level of recycled content; etc.) → The declaration of conformity and the technical documentation have been drawn up and the conformity assessment procedure has been carried out by the manufacturer¹⁹ → The battery bears the CE marking²⁰ and is marked and labelled in accordance with the requirements of the regulation → The battery is accompanied by the required documents.
Methane emissions reduction in the energy sector	Pending trilogue discussions on the text.	Combating climate change	<p style="text-align: center;">Due diligence obligations imposed on importers</p> <ul style="list-style-type: none"> → From 1 January 2026, importers of coal, oil and gas will have to prove that exporters to the EU meet requirements on measurement,

¹⁹ The conformity assessment procedure is described in Annex VIII of the Regulation. There are three levels of control: internal production control, quality assurance of the production process, and conformity control based on unit verification.

²⁰ See Article 19 of the Regulation

Proposal for a Regulation Text adopted by the EP (9/5/2023)	Implementation in principle from 1 January 2026.		monitoring, reporting and verification, leak detection and repair, venting and flaring.
Industrial emissions Proposal for a Directive Text adopted by the EP (11/7/2023)	Trilogues in progress	Integrated prevention and reduction of pollutants	<p>Installation compliance with European operating rules + due diligence obligation imposed on importers</p> Products from livestock farming may be placed on the EU market if: <ul style="list-style-type: none"> → The installation in which rearing is carried out meets the uniform conditions for operating rules defined in the Directive, or → Importers provide guarantees of origin from third countries that are deemed comparable in terms of effectiveness. <p>The competent authorities of the Member State into which products are imported check their conformity. The EC will present a delegated act establishing the procedure for placing products on the EU market and the verification procedure to be followed by competent authorities to ensure a level playing field</p>
Ecodesign rules for sustainable products Proposal for a Regulation adopted by the EP (12/07/2023)	Trilogues in progress	Reducing the negative impact of product life cycles on the environment	<p>Due diligence obligations imposed on importers</p> Importers of products must ensure that: <ul style="list-style-type: none"> → The appropriate conformity assessment procedure has been applied by the manufacturer and the manufacturer has drawn up the technical documentation → Products meet certain information requirements relating to aspects of the products

			<ul style="list-style-type: none">→ Information requirements include, as a minimum, product passport requirements→ The products are accompanied by information on their performance; information for consumers on how to install, use, maintain and repair the product; information for treatment facilities on disassembly, recycling or disposal of the product at the end-of-life→ A product passport is available.
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ANNEX 1: DETAILS OF MIRROR MEASURES ADOPTED OR UNDER CONSIDERATION AND THE VEBLIN INSTITUTE'S RECOMMENDATIONS IN FAVOUR OF MIRROR MEASURES IN THE FIELD OF ANIMAL WELFARE, ON THE USE OF PESTICIDES IN THE TEXTILE SECTOR, AND IN THE FISHERIES SECTOR

1. In the agricultural sector

1.1. Examples of mirror measures taken before the European Green Deal

1.1.1. Ban on growth hormones in animal products

In 1981, under pressure from European citizens, the EU banned the use of growth hormones in the livestock sector²¹. At international level, the use of these hormones is authorised subject to compliance with a maximum residue limit in the final product. **In 1996, to protect European consumers and farmers, the EU banned imports from farms that used growth hormones²².**

Countries wishing to import animal products into the EU must comply with the ban on growth hormones by setting up a dedicated system for the European market, the main features of which are as follows:

- The system is placed under the responsibility of the health authorities in the producing country.
- **The EC (DG Health) can carry out audits in third countries to check that the requirements are being met²³.** However, numerous flaws have been identified in this system, as shown by the latest audits in Canada and Brazil²⁴.

²¹ [Council Directive 81/602/EEC](#) of 31 July 1981 concerning the prohibition of certain substances having a hormonal action and of any substances having a thyrostatic action.

²² [Council Directive 96/22/EC](#) of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of β -agonists.

²³ The results of these audits are available on the [EC website](#).

²⁴ The audit carried out by DG Health in Canada in 2019 revealed a number of serious shortcomings: a lack of interconnection between computer databases; traceability of cattle destined for the EU market was based on paper documents that were incomplete or contained incorrect information; shortcomings in the establishments authorised to export and in traceability checks, as well as uncertainties about hygiene conditions; and a system whereby private veterinarians, approved to certify cattle destined for export, are paid by the farmers themselves. As a result, the controls put in place did not ensure

Furthermore, the recommendations resulting from these audits have not been implemented (even the CETA for Canada has still only been provisionally applied pending ratification by all EU Member States).

- **Control is exercised over the production process**, not the product. Checking the absence of hormones in the finished product is relatively easy, but does not guarantee that these substances have not been used. As hormones leave very little residue, product sampling is of limited value for control purposes. Controls within the production chain should be able to determine the effective application of the ban. Control plans are specific to each country²⁵.
- **A specific traceability system**: rather than identifying batches of animals, the industry must provide for identification of individual animals in order to meet the traceability requirements of the European system. But this individual traceability of animals does not always cover the entire chain, from birth to slaughter, as in the EU.
- **Slaughterhouses must be accredited to trade with the EU**. The EC approves slaughterhouses that meet European standards (in terms of hygiene, but not animal welfare). For example, when slaughtering animals for the European market, specific cleaning procedures must be put in place to avoid contamination. However, inspection visits are not regular and shortcomings may be observed.

1.1.2. Placing imported products on the EU market as organic products

[Regulation \(EU\) 2018/848](#)²⁶, which came into force on 1 January 2022, covers the organic production and labelling of organic products, as well as control and certification procedures. It applies to both EU and imported products. The regulation introduces a number of changes to the 2007 legislation. In particular, it harmonises the rules applicable to organic operators in EU Member States and third countries by introducing a conformity system.

compliance with the ban on hormone treatment. See [DG Health, Report of an audit carried out by DG Health in Canada from 9 to 20 September 2019 to evaluate the control systems in place governing the production of bovine and pig meat intended for export to the EU](#).

²⁵ In accordance with [Regulation \(EU\) 2017/625](#) each Member State must have an effective system of official controls, to verify that businesses comply with EU standards throughout the food and feed chain. Member States must draw up multi-annual national control plans (MANCPs) covering all areas governed by EU agri-food legislation. Member States must submit an annual report to the EC on the implementation of their official controls in accordance with their MANCP. The EC then produces a report on the operation of official controls in the Member States. See the latest [EC report on the overall operation of official controls carried out in Member States \(2021\) to ensure the application of food law, feed law, rules on animal health and welfare, plant health and plant protection products](#) (5 May 2023).

²⁶ It replaced [Regulation \(EC\) 834/2007](#).

An imported product may be marketed as organic in the EU if it meets one of the following conditions:

- Complies with third-party production and control rules recognised, under an international agreement, as equivalent to EU rules²⁷. Organic products are inspected and certified by the national authorities in the country of origin. Agreements governing the import of organic products have been concluded with these countries, whose control standards are deemed equivalent to those of the EU²⁸.
- For other third countries: compliance with EU organic production rules and a certificate of conformity issued by the inspection authorities designated by the EC.

The rules governing **controls** on organic products, including imported products, are covered by [Regulation \(EU\) 2017/625](#) and by [Regulation \(EU\) 2018/848](#). Regulation 2017/625 sets out two procedures for imports:

- One for animals and goods that are subject to compulsory at-border controls,
- The other concerns import controls to be carried out at an appropriate location within the EU.

[Delegated Regulation 2021/2306](#) lays down rules for official controls on imported consignments of organic products. [Delegated Regulation 2021/2305](#) specifies the cases in which organic products are exempt from official controls at border control posts. These are products that present no or low risk to human, animal or plant health, animal welfare or the environment. These products are checked at the points of release for free circulation²⁹ in the Member State.

²⁷ Regulation 2018/848 provides for a transitional period for the third-country equivalence system recognised under the previous Regulation 834/2008. The aim is to move the recognition of equivalent third countries towards international trade agreements, and the system of recognition of third country control bodies and authorities on the basis of equivalence towards recognition based on conformity.

²⁸ In the previous version of the regulation (Commission Regulation (EC) 1235/2008 of 8 December 2008), Argentina, Australia, Canada, Chile, Costa Rica, India, Israel, Japan, the Republic of Korea, Switzerland, Tunisia, the United States and New Zealand were recognised as “equivalent countries”. With Regulation 2018/848, all these third countries will have to renegotiate the terms of their bilateral trade agreements

²⁹ “The procedure allowing non-Union goods to circulate freely throughout the customs territory of the Union in the same way as Union goods is called “release for free circulation”. https://taxation-customs.ec.europa.eu/customs-4/customs-procedures-import-and-export-0/what-importation_en.

“Non-Union goods intended to be put on the Union market or intended for private use or consumption shall be placed under release for free circulation. Release for free circulation shall entail the following: the collection of any import duty due; the collection, as appropriate, of other charges; the application of commercial policy measures and prohibitions and restrictions; the completion of the other formalities laid down in respect of the import of the goods” (Source: https://finance.belgium.be/en/customs_excises/enterprises/brexit/customs/general-0#q2)

[Delegated Regulation \(EU\) 2021/1698](#) establishes procedural requirements for the recognition of authorities and control bodies competent to carry out controls on certified organic operators and organic products in third countries. It also specifies the rules concerning their supervision and the controls and other actions to be carried out by these authorities and control bodies.

When organic products are imported from a third country, they must be accompanied by a certificate of inspection obtained via the electronic system [TRACES](#). The aim is to prevent the risk of false certificates being issued, offering consumers a better guarantee. The certificate must be validated on arrival in the EU.

1.1.3. Application of European slaughter rules to imported animal products

At present, European standards relating to animal welfare at the time of slaughter are the only ones applicable to imported products. Under the terms of Regulations (EC) 1099/2009 and (EC) 854/2004³⁰, meat and other products from slaughtered animals may only be imported into the EU if they have been dispatched from establishments appearing on lists drawn up and updated in accordance with these regulations. An establishment may be placed on such a list only if the competent authority of the third country of origin guarantees:

- That this establishment, and any establishment handling raw materials of animal origin used in the manufacture of the products of animal origin, complies with European requirements or those defined as equivalent
- That an official inspection service in the third country monitors the establishments and makes available to the EC all relevant information on establishments supplying raw materials, and
- That this service has the power to prevent establishments from exporting to the EU if they fail to comply with the relevant requirements.

A health certificate must accompany meat imported from third countries and must be supplemented by an attestation certifying compliance with food hygiene and stunning requirements that are at least equivalent to those in the EU.

In the Farm to Fork strategy, the EC is committed to ensuring a higher level of animal welfare and plans to update EU regulations in this area.

The revision of the animal welfare legislation is scheduled for the last quarter of 2023. The draft impact study recommends the reciprocity of the new requirements (see point 3.1 below).

³⁰ [Regulation \(EC\) 1099/2009](#) of 24 September 2009 on the protection of animals at the time of killing (Art. 12) and [Regulation \(EC\) 854/2004](#) of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (Art. 12).

1.2. Mirror measures implemented in the context of the European Green Deal

1.2.1 Use of pesticides

The Farm to Fork strategy sets targets of reducing by 50% the overall use and risks of chemical pesticides and of reducing by 50% the use of the more hazardous pesticides³¹, by 2030. Without putting an end to the difference in production standards between European and imported products, this objective cannot be achieved.

At present, **to be authorised on the European market³²:**

- **Active substances must not meet any of the exclusion criteria set out in [Regulation \(EC\) 1107/2009](#)³³.** These criteria include the potential effects of the substance on human health and the environment (persistent organic pollutant (“POP”), persistent, bioaccumulative and toxic (PBT), or very persistent and very bioaccumulative (vPvB)).
- **Active substances meeting the approval criteria must also satisfy a number of conditions³⁴,** relating to their effects on human health, animal health, the environment and biodiversity (e.g. on bees and the survival of colonies).

In order to protect the health of European consumers, **food products containing levels of pesticides exceeding the limits set by [Regulation \(EC\) 369/2005](#) cannot be sold on the internal market³⁵.** Maximum residue limits (MRLs) for an active substance are

³¹ These are plant protection products containing active substances that meet the exclusion criteria set out in points 3.6.2 to 3.6.5 and 3.8.2 of Annex II to [Regulation \(EC\) 1107/2009](#) or are considered candidates for substitution in accordance with the criteria set out in point 4 of that Annex.

³² In 2019, the [European Parliament’s PEST Committee](#) concluded that the current system for authorising pesticides is not achieving its objective, highlighting the need for urgent change. The Committee’s report lists 116 recommendations calling for independence, objectivity, transparency and better use of science throughout the authorisation procedure. According to [PAN Europe’s analysis](#): 15% of the PEST recommendations have been sufficiently implemented; 28% of the PEST recommendations have either been partly or insufficiently implemented, or the work is ongoing (and its outcome remains uncertain); and 57% of the PEST recommendations have not been implemented or the implementation has not led to the desired improvement. In some cases, the situation has worsened. The NGO concludes that health and the environment are seriously threatened by the current use of pesticides.

³³ These exclusion criteria are listed in points 3.6.2 to 3.6.5 and 3.8.2 of Annex II to Regulation (EC) 1107/2009.

³⁴ These conditions are listed in Article 4 of the Regulation.

³⁵ MRLs are either specific to a product or general (default limit set at 0.01 mg/kg) when no specific MRL has been defined, depending on the product. Food products containing quantities of pesticides exceeding the defined limits may not be sold on the common market. Delegated acts are regularly adopted by the Commission to revise MRLs for substances. MRLs for active substances can be consulted via the EU database: [EU Pesticides Database](#).

reviewed (in theory) within 12 months of the decision to approve or disapprove the substance³⁶.

While it is prohibited to treat crops in the EU with substances that are not approved/authorised by European regulations, **crops produced outside the EU may have been treated with these substances provided that the foodstuffs imported into the EU comply with the MRLs set out in [Regulation \(EC\) 369/2005](#)**. Member States, third countries and manufacturers may also request **import tolerances**³⁷. These are MRLs for pesticides, based on authorised uses outside the EU, and therefore potentially for substances that are no longer approved in the EU. Applications for import tolerances may lead the Commission to raise the MRLs for active substances, even when these substances are banned in the EU³⁸. Furthermore, **MRLs do not cover all imported products** (animal feed and energy or ornamental use).

The EU has made a number of commitments relating to mirror measures in the area of pesticides:

- In the Farm to Fork strategy (Oct. 2020), the EC undertakes to take environmental aspects into account when assessing requests for import tolerances for substances that are no longer authorised in the EU, and to review import tolerances for substances that meet the exclusion criteria³⁹ and present a high level of risk to human health.
- During parliamentary discussions on the CAP review (Oct. 2020), the European Parliament adopted an amendment introducing cross-cutting mirror

³⁶ See Article 12 of Regulation (EC) 396/2005. However, the re-evaluation process for authorised substances is often very lengthy, leading to authorisations being extended even when they relate to potentially hazardous substances. This situation has been strongly criticised by the European Parliament (See, for example, the European Parliament resolution of 18 December 2019: "...it is unacceptable that substances which are known to meet the cut-off criteria for active substances that are mutagenic, carcinogenic and/or toxic for reproduction, or that have endocrine-disrupting properties, which are established to protect human and environmental health, continue to be allowed for use in the Union, thereby putting public and environmental health at risk").

³⁷ [Report](#) from the Commission, Application of EU health and environmental standards to imported agricultural and agri-food products, COM (2022) 226 final, 3 June 2022.

³⁸ See Article 3.2(g) of Regulation 396/2005.

³⁹ These substances may have an effect on human health and contain substances classified as mutagenic, carcinogenic, toxic for reproduction, or having endocrine-disrupting effects in accordance with points 3.6.2 to 3.6.5 and 3.8.2 of Annex II of [Regulation \(EC\) 1107/2009](#).

measures⁴⁰. It was deleted during trilogue discussions⁴¹ in favour of a statement by the EC that it will ensure that *“import tolerances and Codex MRLs will be assessed and reviewed for active substances that are not, or are no longer, approved in the EU, so that any residues in food or feed do not present any risk to consumers. In addition to health and good agricultural practice aspects currently considered, the Commission will also take into account environmental concerns of a global nature in conformity with WTO rules when assessing import tolerance applications or when reviewing import tolerances for active substances no longer approved in the EU. The presentation by the Commission of the proposal for a legislative framework for sustainable food systems will be a crucial additional step towards the full achievement of this ambition, in coherence with the Green Deal objectives”*.

- In June 2022, the EC published a report on the application of European environmental and health standards to imported agricultural and food products⁴². It recognises the political relevance and legal feasibility of *“autonomous measures relating to environmental or ethical aspects of the process or production methods of imported products [or which] reflect (...) the demands of European consumers (...)”*. The EC recommends the adoption of such measures on a case-by-case basis in European sectoral legislation.

Legislative progress: MRLs reduced to detection threshold for two neonicotinoids (clothianidin and thiamethoxam) for environmental reasons [\(Regulation \(EC\) 2023/334 of 2/2/2023\)](#)⁴³

Prior to the adoption of this regulation, considerations relating to environmental or health damage in the countries of production were not taken into account when setting MRLs. This regulation therefore represents a step forward. But it has a number of

⁴⁰ *“Agricultural and agri-food products may be imported from third countries only if they comply with production standards and obligations in line with those adopted, in particular in the fields of environmental and health protection, for the same products harvested in the Union or produced from such products. The Commission may adopt implementing acts laying down the rules of conformity applicable to operators with regard to imports, taking into account reciprocal agreements with third countries. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).”* European Parliament, 2020.

⁴¹ The Commission considered that the article in its initial version was not compatible with WTO law

⁴² [Report](#) from the Commission to the European Parliament and the Council, Application of EU health and environmental standards to imported agricultural and agri-food products. [Report from the Commission to the European Parliament and the Council](#), COM (2022) 226 final, 3 June 2022.

⁴³ [Commission Regulation \(EU\) 2023/334](#) of 2 February 2023. In 2018, the EU banned the three main neonicotinoids (clothianidin, imidacloprid and thiamethoxam) for all outdoor uses. Following the adoption of these restrictions, all applications for the renewal of the approval of these three neonicotinoids were withdrawn. As a result, the approvals of these substances expired on 31 January 2019, 30 April 2019 and 1 December 2020 respectively. Since February 2020, thiacloprid is no longer approved in the EU either.

limitations that jeopardise its effectiveness in terms of its environmental protection objective. These limitations might also undermine its solidity in the event of a WTO dispute. Specifically:

- Imidacloprid and thiacloprid, the use of which is prohibited in the EU, are not covered.
- No MRLs are set for products used in the production of animal feed, for energy purposes or for processed food products.
- The legal basis for the text is Regulation 396/2005, whose Annexes II and V it amends. The approach adopted therefore consists of using a sanitary and phytosanitary measure to deal with an environmental problem⁴⁴.
- The fact that neonicotinoids are not detected in products does not guarantee that they have not been used during the production process. They may simply be present in concentrations too low to be detected. As a result, lowering MRLs may not be the most effective way of protecting the environment. A total ban on the use of these substances for imported products would undoubtedly produce better environmental results.
- The European regulation is silent on the mechanism that allows Member States to grant derogations for the use of banned neonicotinoids. However, a recent ruling by the CJEU could put an end to this option⁴⁵.
- The ban should apply from 7 March 2026 at the earliest, in accordance with Article 3 of the Regulation.

Proposals for the wider use of mirror measures on pesticide use:

1/ Introduce health and environmental mirror measures for all banned pesticides, with a programme of work, commitments and a precise timetable.

MRLs for the most hazardous banned or non-approved substances should be lowered to the limit of detection. Priority should be given to targeting the 64 banned or non-

⁴⁴ Article 1 defines the objectives of Regulation 396/2005 as follows: “This Regulation establishes, in accordance with the general principles laid down in Regulation (EC) No 178/2002, in particular the need to ensure a high level of consumer protection and harmonised Community provisions relating to maximum levels of pesticide residues in or on food and feed of plant and animal origin.”

⁴⁵ In a ruling handed down on 19 January 2023, the CJEU concluded that the derogations granted by the Member States for the use of clothianidin and thiamethoxam on treated seeds were illegal. The CJEU ruled that the derogations provided for in Article 53 of Regulation (EC) 1107/2009 could not apply to seeds treated with these neonicotinoids, as Regulations EU 2018/784 and EU 2018/785 expressly prohibit the placing on the market and use of seeds treated with these substances.

approved active substances for which, as of the beginning of 2023, maximum residue limits were above the limit of detection for certain food product groups⁴⁶.

However, the MRL approach may prove insufficiently effective in protecting the environment and the health of people in the producing country, particularly because:

- For the moment, no MRL has been set for products intended (exclusively) for animal feed.
- The MRL regulation does not cover energy or ornamental products such as flowers.
- It is possible to grow food using substances that are harmful to the environment without the chemicals in question ending up as residues in the final product.

That's why we need to find alternatives to lowering MRLs. **In such cases, a total ban could be implemented for the most hazardous substances.**

2/ It is also important to:

- Put an end to the possibility to request import tolerances for these products.
- Adopt a European regulation banning the production and export of EU-banned hazardous substances
- Increase the resources devoted to health safety issues and border controls.
- Improve consumer information on the origin of products and their manufacturing processes.
- Work more closely with third countries, particularly low- and middle-income countries, through other policies (aid for trade, development and cooperation programmes) to facilitate the transition away from the use of these substances.

1.2.2. Ban on growth-promoting antibiotics

The Farm to Fork strategy makes the fight against antibiotic resistance a health priority⁴⁷. The Commission has set itself the objective of reducing by 50% the overall EU sales of antimicrobials for farmed animals and aquaculture by 2030. Within the Farm to Fork strategy, the EC commits to adopting a mirror measure to ensure that products

⁴⁶ https://www.veblen-institute.org/IMG/pdf/mrl_banned_eu_pesticides_2023.pdf

⁴⁷ Antimicrobial resistance is thought to be responsible for the deaths of 33,000 people a year in the EU. See Cassini et al, "Attributable deaths and disability-adjusted life-years caused by infections with antibiotic-resistant bacteria in the EU and the European Economic Area in 2015: a population-level modelling analysis", *The Lancet Infectious Diseases*, 2019, vol.19 (1)

of animal origin imported into the EU comply with the requirements on the use of antibiotics, in accordance with the Regulation on veterinary medicinal products.

Since 1 January 2006, the use of antibiotics as growth promoters has been banned in the EU⁴⁸. [Regulation \(EU\) 2019/6](#) of 11 December 2018 on veterinary medicinal products, which came into force in January 2022, contains a series of measures to combat antimicrobial resistance, including a range of rules applicable to the use of antimicrobial medicinal products⁴⁹. **Article 107(2) prohibits the use of these medicines in animals to promote growth or increase yield. And Article 118 extends this ban to operators from third countries wishing to import animals or animal products into the EU.**

This mirror measure has not yet been applied. On 27 February 2023, the Commission published a [delegated regulation](#) setting out the principle of the ban. Animals and animal products may only enter the EU market:

- If they originate from a third country or region of a third country that appears on the list of approved third countries; and
- If they are accompanied by an official certificate of conformity attesting that the consignment complies with the prohibition.

The EC will add countries on the list of approved third countries on the basis of available evidence and guarantees that European requirements are met, including information received on the procedures in place to guarantee the traceability and origin of the animals or products concerned.

The delegated regulation refers to a subsequent implementing act the task of laying down the list of approved third countries authorised to export products of animal origin to the EU and the specific requirements to be provided in an official attestation. The new rules will only apply two years after the adoption of this list, the date of publication of which is unknown.

The delegated act of 27 February contains other loopholes:

- There is no provision defining how breaches of the ban and failures in a third country's traceability system⁵⁰ will be penalised.
- The guarantees expected in terms of traceability should be made explicit. Antibiotic administration cannot be monitored without a strict traceability

⁴⁸ [Regulation \(EC\) 1831/2003](#) of 22 September 2003 on additives for use in animal nutrition

⁴⁹ See Article 107 of [Regulation \(EC\) 2019/6](#) of 11 December 2018 on veterinary medicinal products.

⁵⁰ To demonstrate the need to define such sanctions, we refer to the example of Canada, which has not been subject to sanctions even though an [audit](#) conducted in 2019 revealed serious shortcomings in the local beef traceability system. For the time being, therefore, the “hormone-free” labelling of Canadian beef imported into the EU is far from reliable.

system on the farm, including identification, individual monitoring of animals from birth to slaughter and the transmission of reliable information. This measure is all the more necessary because farming practices in third countries do not always guarantee the non-use of antibiotics as growth promoters⁵¹.

- There is no timetable for when the implementing acts will be published.
- The ban will not come into effect until 2 years after the adoption of the implementing acts.

2. Carbon border adjustment mechanism

The “Fit for 55” climate package sets a target of a 55% reduction in greenhouse gas emissions by 2030 compared with 1990, and carbon neutrality by 2050. With the carbon border adjustment mechanism (CBAM) announced in the Green Deal⁵², the EU is seeking to reduce “carbon leakage”, i.e. the transfer of EU production to other countries that are less ambitious in terms of reducing emissions, or the replacement of EU products with imported products that are more carbon-intensive⁵³. The aim of the CBAM is therefore to end differences in emission reduction constraints between the EU and non-EU countries.

Since 1 January 2005, an emissions trading scheme (ETS)⁵⁴ has been in place for certain companies in EU Member States. Its aim is to make companies bear the cost of their pollution. Companies buy and sell emission allowances (or quotas) distributed or sold each year, in a process governed by an emissions cap that decreases year on year⁵⁵. A greenhouse gas emissions allowance gives the holder the right to release a certain quantity (generally expressed in tonnes of CO₂ equivalent) of greenhouse gases into the atmosphere. Companies in the sectors concerned are required to purchase an amount of GHG emissions allowances corresponding to the amount of CO₂ they emit.

⁵¹ In Brazil, for example, the same farm may house one supply chain destined for export to the EU and identified by the local SISBOV traceability system, and another which is not and is therefore not identified.

⁵² [Communication](#) from the EC, “The European Green Deal”, *op. cit.*, p. 6

⁵³ *Ibid*, p. 6

⁵⁴ See [Directive 2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance). See also [Directive 2009/29/EC](#) of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community. The ETS applies to the EU Member States as well as Norway, Liechtenstein and Iceland.

⁵⁵ Cap and trade principle. Veblen Institute, [Le Parlement européen adopte le paquet « Fit for 55 » : explication des votes](#) [The European Parliament adopts the “Fit for 55” package: explaining the votes]

In December 2022, the Council and the European Parliament reached a provisional political agreement on a reform of the EU ETS (phase IV 2021-2030). The Council formally adopted the new legislation in April 2023. The revised ETS includes the following new features:

- It now targets a 62% reduction in emissions for the sectors it covers by 2030 compared with 2005 (compared with 43% under current legislation).
- **New sectors covered.** Until now, the ETS has covered electricity and heat generation, certain energy-intensive sectors (oil refineries, steel works, production of iron, cement, lime, glass, ceramics, paper pulp, ferrous and non-ferrous metals, primary and refined aluminium, nitric acid, adipic acid, glyoxylic acid, ammonia, soda ash, hydrogen, petrochemical products), and intra-European commercial aviation (flights within the European Economic Area). These sectors represent around 10,000 companies and 40% of EU emissions⁵⁶. From 2027, emissions associated with road fuels and the heating of buildings (via a separate ETS)⁵⁷ as well as maritime transport (including from outside the EU)⁵⁸ will be covered. However, despite requests to include long-haul flights, the ETS will continue to apply to intra-European flights only.
- **Free CO₂ allowances will be phased out from 2026 and completely removed in 2034, in parallel with the gradual introduction of the CBAM and only in the sectors covered by the latter.** This reform will encourage the decarbonisation of industries and the transition to lower-emission production methods. But the very slow pace at which these free allowances are being reduced poses a challenge for the implementation of the CBAM, as it means applying stricter rules to imported products during the transitional period.
- **Allocation of EU ETS revenues:** Member States must direct 100% of revenues towards investments aimed at combating climate change. As of 2022, Member States' revenue from the ETS had reached almost €30 billion. The Commission also proposes that 30% of all revenue generated by the ETS should be paid into

⁵⁶ <https://www.consilium.europa.eu/en/infographics/fit-for-55-eu-emissions-trading-system/>

⁵⁷ From 2027, private individuals will pay a carbon price on fuel and heating. This price will be capped at 45 euros/tonne until at least 2030. (A part of this revenue will go to the States, which will have to invest it in decarbonisation, while a part will go to the Social Climate Fund, which will support private individuals and assist with the energy renovation of buildings and the transition to less polluting modes of transport.

⁵⁸The introduction will be phased in between 2024 and 2026. Ship operators will be required to pay for their carbon emissions.

the EU budget⁵⁹, which should generate revenue of around €7 billion a year from 2024, rising to €19 billion a year from 2028⁶⁰.

Regulation (EU) 2023/956 of 10 May 2023 introduces a carbon border adjustment mechanism. This mechanism aims to rebalance the competitive relationship between European and imported products, *“so that it is no longer advantageous to produce goods in a country where climate regulations fall short of European requirements”*⁶¹ (our translation). Under this mechanism, certain products imported into the EU, to which no carbon price (or a price lower than the EU carbon price) has been applied for production-related emissions by the exporting country, will be subject to a carbon price when they enter the European market.

Transitional phase to commence from 1 October 2023. Importers of the goods covered will only have to report the direct and indirect GHG emissions associated with their imports. The scope of products covered (iron, steel, cement, aluminium, fertilisers, electricity, hydrogen, and certain end products such as screws and bolts) is different from the ETS applicable to European operators and will be re-examined during the transitional phase to assess the possibility of including other goods covered by the ETS.

The permanent system comes into force on 1 January 2026. Importers will have to report each year the quantity of goods imported into the EU during year N-1 and their embedded GHG emissions. Importers will be required to purchase carbon certificates equivalent to the price of carbon that would have been paid if the products had been manufactured in accordance with European rules⁶². Companies in countries with a carbon pricing scheme equivalent to that of the EU will not be obliged to purchase carbon certificates.

Failure to comply with the mechanism⁶³ will result in the payment of a penalty.

The price of the certificates will be indexed to the weekly average price of the ETS allowance auctions, expressed in euros per tonne of CO₂ emitted. Unlike the cap and trade system of the EU ETS, the CBAM will not set a cap on imports or emissions, and there will be no trading of carbon emission permits.

⁵⁹ Communication from the Commission, COM (2023)330 final, 20 June 2023, “An adjusted package for the next generation of own resources”

⁶⁰ Press release, 20 June 2023, Brussels, [EU budget: Commission puts forward an adjusted package for the next generation of own resources](#)

⁶¹<https://blog.leclubdesjuristes.com/ladoption-du-mecanisme-dajustement-carbone-aux-frontieres-par-lunion-europeenne-larsenal-europeen-de-lutte-contre-les-emissions-de-gaz-a-effet-de-serre-se-renforc/>

⁶² https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3661

⁶³ This means either not returning the certificates corresponding to the emissions embedded in the products, or submitting false information to the competent authorities.

The phasing out of free allowances under the EU ETS will take place in parallel with the phasing in of the CBAM over the period 2026-2034.

3. EU ban on the placing on the market of products derived from deforestation

The EU is committed to halting the loss of forest cover worldwide by 2030⁶⁴. As the second largest importer of deforestation⁶⁵, it has also pledged to “take measures, both regulatory and otherwise, to promote imported products and value chains that do not involve deforestation and forest degradation”⁶⁶.

With [Regulation \(EU\) 2023/1115](#)⁶⁷ on imported deforestation (EUDR) certain products will have to meet a number of criteria in order to be placed on the EU market or exported from the EU market:

- Be deforestation-free, i.e. produced on land that has not been subject to deforestation or forest degradation after 31 December 2020;
- Have been produced in accordance with the relevant legislation of the country of production;
- Be covered by a declaration of due diligence.

The **products covered** by the new regulation are wood, palm oil, soya, coffee, cocoa, rubber and beef, as well as products derived from these raw materials such as hides, leather, charcoal, paper and printed paper⁶⁸.

⁶⁴ UNFCCC Conference 2021, Glasgow <https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/>

⁶⁵ In 2017, the EU was responsible for 16% of deforestation linked to international trade. <https://www.wwf.eu/?2831941/EU-consumption-responsible-for-16-of-tropical-deforestation-linked-to-international-trade>

⁶⁶ [Communication](#) from the EC, the “European Green Deal”, *op. cit.*, p. 16.

⁶⁷ Prior to the regulation on imported deforestation, the European legislative framework only partially addressed deforestation. The “[Forest Law Enforcement, Governance and Trade Action Plan](#)” 2003 is the EU’s main policy for combating illegal logging and associated trade. But the action plan does not address deforestation as such. The action plan is primarily based on a voluntary scheme to ensure that only legally harvested timber is imported into the EU from countries that agree to participate in the scheme. The regulation on forest law enforcement, governance and trade ([Regulation \(EC\) 2173/2005](#)) establishes a licensing system that forms the basis for voluntary partnership agreements. The EU Timber Regulation ([Regulation \(EU\) 995/2010](#)) prohibits the placing on the EU market of illegally harvested timber and timber products, and lays down obligations for operators who place timber on the market.

⁶⁸ See the list in Annex I to [Regulation \(EU\) 2023/1115](#).

The **compulsory due diligence system** imposed on operators wishing to place products on the EU market or to export them from the EU market ensures that the products are legal, and that they are not linked to deforestation or forest degradation that took place after the deadline of 31 December 2020. This system requires companies to:

- **Collect certain information about the product, in particular the geographical coordinates of facilities where it was produced.** For example, for products containing or derived from cattle, the geolocation requirement concerns all establishments where the cattle were reared.
- Carry out a **risk assessment** that takes into account, in particular, the risk rating of the country of production; the presence of indigenous populations; the prevalence of deforestation or forest degradation in the country or area of production; and levels of corruption, lack of law enforcement and human rights violations in the country of production.
- Where assessment shows that a risk exists, operators will have to adopt **risk mitigation procedures and measures** before placing products on the EU market or exporting them.

The level of due diligence required varies according to the **risk rating assigned to the country**. Producer countries are given a high, standard (default rating) or low rating based on a number of criteria, including:

- Satellite-verified deforestation rates, agricultural production expansion rates and production trends;
- Producer countries' legislation;
- Producer countries' commitments on deforestation;
- The existence of agreements between the country in question and the EU on deforestation, or forest degradation agreements concluded with the EU.

Each year, operators will have to report publicly on their due diligence system and provide information on the products concerned, their volume, the country/region of origin, the results of their risk assessment and any mitigation measures put in place.

Competent authorities designated by the Member States will verify operators' reports and due diligence systems. They will check a certain percentage of operators and products each year.

The minimum level of inspections to be carried out by Member State authorities varies according to the risk. Suppliers will be audited at a rate of 9% for high-risk countries, 3% for standard-risk countries and 1% for low-risk countries.

Penalties for non-compliance must be proportionate and dissuasive. Infringing operators may be fined at least 4% of their total annual EU turnover. They may also have their products confiscated and be forced to reimburse the costs incurred by the competent authorities.

The Regulation has various limitations:

- Its scope:
 - The Regulation does not cover certain commodities (sugar, ethanol, poultry) the production and trading of which play a crucial role in accelerating deforestation. There are plans to extend the list of products and raw materials covered in 2 years' time.
 - The Regulation does not cover woodland, grassland or wetlands. The Brazilian Cerrado is therefore not covered, with the potential perverse effect that *“more imports of agricultural commodities, as foreseen with EMTA, will lead to an increased leakage of deforestation from ecosystems covered by the EUDR (forests) to “uncovered” ecosystems (wooded lands and savannahs).”*⁶⁹.
 - Financial institutions are not included in the Regulation's scope of application, even though they are a key factor in deforestation. The role of banks in financing deforestation is well-documented. The Regulation provides for a review of the issue in 2 years' time⁷⁰.
 - The regulation does not contain robust provisions to protect the land rights of indigenous peoples and local communities⁷¹.
- Requirements relating to traceability standards: The risk assessment system does not contain any criteria relating to the country's traceability standards. Countries with no traceability systems should automatically be classified as high-risk⁷².
- Degree of precision in risk mapping⁷³. The classification should differentiate between each category of goods within a country. This level of granularity is crucial. Otherwise, the specific risks associated with certain regions,

⁶⁹ FERN, [Why the EU Deforestation Regulation won't sugar coat the EU-Mercosur trade agreement](#), April 2023.

⁷⁰ *Ibid.* As FERN points out, the EU/Mercosur Agreement provides for further liberalisation of services, including financial services. The Agreement will make it easier for European service companies to operate and invest in Mercosur countries, and vice versa. Making it easier for EU companies to operate in Mercosur countries represents a risk.

⁷¹ *Ibid.*

⁷² Veblen Institute, [Regulation on imported deforestation](#) - Policy Brief, February 2022.

⁷³ *Ibid.*

commodities or supply chains could be overlooked. This is potentially problematic given the “simplified due diligence” exemption that permits companies not to carry out risk assessment and mitigation when goods come from countries classified as low risk; the exemption could then constitute a potential loophole in the due diligence system.

- Finally, the EU-Mercosur agreement will make it more difficult to implement the regulation on imported deforestation. FERN identifies the following risk: as the Commission and Mercosur are currently negotiating the additional instrument, there is a risk that the EC will propose a low-risk rating under the EUDR in exchange for finalising the EU-Mercosur Agreement⁷⁴.

4. Environmental requirements for placing batteries on the EU market

In the European Green Deal, the EC undertakes to propose legislative measures “to ensure a safe, circular and sustainable battery value chain for all batteries, including to supply the growing market of electric vehicles”⁷⁵. The EU is dependent both on access to essential raw materials for batteries (lithium, nickel, cobalt, manganese and graphite) and on battery production, with European production being very low⁷⁶.

New environmental requirements for batteries placed on the European market. After 2 years of discussions, the [Regulation](#) on batteries and battery waste was adopted on 9 December 2022 and came into force on 17 August 2023. Its effective implementation will require the adoption of several delegated acts. The aim of the regulation is to make the manufacture and end-of-life stage of batteries more sustainable. It covers portable batteries for electronic devices, industrial batteries and batteries for electric transport (cars, mopeds, bicycles and scooters in particular).

These new requirements will be implemented in stages:

- Batteries must contain a limited quantity of hazardous substances (mercury, cadmium, lead)⁷⁷.

⁷⁴ FERN, [Why the EU Deforestation Regulation won’t sugar coat the EU-Mercosur Trade Agreement](#), April 2023.

⁷⁵ [Communication](#) from the EC, “The European Green Deal”, *op. cit.*, p. 10

⁷⁶ Lithium extraction is concentrated in Australia and Chile (source: [Statista](#)), Cobalt in Congo (source: [Statista](#)) and Graphite in China (source: [Statista](#)). Battery production is concentrated in China (for example, see [Statista](#), production of lithium-ion batteries for electric cars).

⁷⁷ See Article 6 and Annex I “Restrictions on substances”, *ibid*.

- No later than 18 August 2024, technical documentation must demonstrate that stationary battery energy storage systems⁷⁸ placed on the market or put into service are safe under normal conditions of operation and use⁷⁹.
- Mandatory “carbon footprint declaration” for batteries: phased implementation from February 2025 to February 2030, depending on the type of battery⁸⁰.
- From August 2026, batteries will have to display a range of general information and information on their state of health and service life (e.g. capacity label, information on minimum average duration when used, relevant chemical symbol indicating heavy metal content)⁸¹.
- From 18 August 2028, portable batteries for everyday use will have to comply with minimum values for electrochemical performance and durability parameters⁸². From 18 August 2027, industrial batteries with a capacity of more than 2 kWh will have to comply with minimum values for electrochemical performance and durability parameters. This obligation will apply from 18 August 2028 for LMT batteries⁸³.
- From February 2027, all batteries will be marked with a QR code (The Commission is empowered to adopt delegated acts to provide for the use of other types of intelligent labelling to replace the QR code)⁸⁴.
- From 18 February 2027, a “digital battery passport” will be required for all LMT batteries, all industrial batteries with a capacity greater than 2 kWh, and all electric vehicle batteries placed on the market⁸⁵.
- Industrial, electric vehicle and automotive batteries must contain a minimum percentage of recycled materials, for example:
 - From 18 August 2031, these batteries will have to comply with minimum percentages of cobalt, lithium, nickel and lead recovered from battery

⁷⁸ “Stationary electrical storage systems are dedicated storage sites that support electricity grids and renewable energy production sites. These are mainly large-scale storage systems - for installed capacities of more than a few megawatt hours (MWh) - with medium or high power (from 100 kilowatts to gigawatts)”. [Agence de l’environnement et de la maîtrise de l’énergie](#).

⁷⁹ Article 12

⁸⁰ Article 7

⁸¹ Articles 13 and 14.

⁸² Article 9 and Annex III

⁸³ Article 10 and Annex IV, Part A.

⁸⁴ Article 13

⁸⁵ Articles 13 and 77

manufacturing waste or post-consumer waste (16% cobalt; 85% lead, 6% lithium and 6% nickel)⁸⁶.

- From 18 August 2036, these proportions will increase (26% cobalt, 85% lead, 12% lithium and 15% nickel)⁸⁷.

Before placing a battery on the market or putting it into service, the manufacturer must ensure that a product conformity assessment has been carried out.

The Regulation establishes a procedure applicable at Member State level for batteries posing a risk to the health and safety of people and property or to the environment (Article 66). In this case, the supervisory authorities will have to carry out an assessment of the battery. If, in the course of the assessment, they find that the battery does not comply with the requirements of the Regulation, they will have to ask the operator to take corrective measures to bring the battery into conformity, to withdraw it from the market or to recall it within a reasonable period.

The Regulation recognises the **need to “ensure that batteries from third countries entering the EU market comply with the requirements of this Regulation and with other applicable EU law (...). Provision should therefore be made for importers to make sure that the batteries they place on the market and put into service comply with the requirements of this Regulation and that the CE marking on batteries and documentation drawn up by manufacturers are available for inspection by the national authorities (...)**”⁸⁸.

Importers may only place batteries on the EU market that comply with the requirements listed above⁸⁹. Before placing a battery on the market, they must verify that:

- The manufacturer has complied with the requirements set out in the regulation⁹⁰
- The declaration of conformity and the technical documentation have been drawn up and the conformity assessment procedure has been carried out by the manufacturer⁹¹

⁸⁶ Article 8

⁸⁷ Article 8

⁸⁸ See recital 52, [Regulation on batteries and waste batteries](#)

⁸⁹ Article 41

⁹⁰ These requirements are set out in Article 38 (6) and (7)

⁹¹ The conformity assessment procedure is described in Annex VIII of the Regulation. There are three levels of control: internal production control, quality assurance of the production process, and conformity control based on unit verification.

- The battery bears the CE marking⁹² and is marked and labelled in accordance with the requirements of the regulation
- The battery is accompanied by the required documents;

Importers shall indicate on the battery, on the packaging or in a document accompanying the battery, their name, their trade name/trademark, their postal address, indicating a single point of contact, and their web address and e-mail address, where applicable.

Where an importer considers or has reason to believe that a battery is not in conformity with the requirements of the Regulation, it shall not place that battery on the market until it has been brought into conformity. If the battery presents a risk, the importer shall inform the manufacturer and the market surveillance authorities, providing details of the non-compliance and any corrective action taken.

They must ensure that storage or transport conditions do not compromise its compliance with the applicable requirements.

Importers who consider, or have reason to believe, that a battery they have placed on the market is non-compliant must take immediate corrective action to bring the battery into conformity, withdraw it or recall it, as appropriate. If the battery presents a risk, importers must immediately inform the market surveillance authority of the Member State concerned.

Where the battery poses a risk, importers will carry out sample tests on marketed batteries, investigate complaints and, where appropriate, keep a register of non-compliant batteries and battery recalls, and inform distributors of this monitoring.

5. Methane emissions reduction in the energy sector

The European Green Deal sets the goal of achieving climate neutrality by 2050. Methane is a powerful greenhouse gas (2nd after CO₂), responsible for nearly one third of global warming⁹³. The majority of methane emissions linked to fossil fuels consumed in the EU occur outside the EU's borders⁹⁴.

⁹² See Article 19 of the Regulation.

⁹³ IPCC, 2021: Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press.

⁹⁴ EC [Staff Working Document Impact Assessment](#) Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A policy framework for climate and energy in the period from 2020 up to 2030.

On 15 December 2021, the Commission presented [a Proposal for a Regulation](#) on methane emissions reduction in the energy sector. This is the first European legislation aimed at reducing methane emissions.

The proposal covers sources of methane such as the oil, fossil gas and coal sectors, as well as biomethane, after its injection into the gas network.

The general objective of the Regulation *“is, in the context of the functioning of the internal market for energy and while ensuring security of supply in the Union, to preserve and improve the environment by reducing methane emissions from fossil energy produced or consumed in the EU”*⁹⁵.

One of the specific objectives of the regulation is *“to improve the availability of information to provide incentives for the reduction of methane emissions related to fossil energy imported to the EU. As the majority of methane emissions linked to fossil energy consumed within the EU occur outside the EU, this specific objective aims seeks to set incentives to reduce methane emissions in partner countries by creating transparency in the market”*⁹⁶.

Under Article 27 of the [initial Proposal for a Regulation](#), *“the Commission shall be empowered to adopt delegated acts in accordance with Article 31 to supplement this Regulation by amending or adding to the information to be provided by importers”*. The [text](#) adopted by the European Parliament on 9 May 2023 extends this Article:

- The Commission shall adopt a delegated act by 31 December 2025 to supplement this Regulation by amending or adding to the information to be provided by importers.
- As of 1 January 2026, they shall demonstrate that exporters of coal, oil and gas into the Union comply with the requirements for the measurement, monitoring, reporting and verification, leak detection and repair, and venting and flaring. Importers that demonstrate the implementation of measures deemed comparable in effectiveness or provide guarantees of origin from countries deemed to have regulatory equivalence shall be subject to a derogation.
- Member States shall ensure that importers of coal, oil and gas comply, within their territory, with the provisions of Article 27 and shall set out progressive penalties for infringements (for example, suspension of the marketing authorisation).
- By 31 December 2025, the Commission shall propose amendments to this Regulation to strengthen the requirements applicable to importers with a view

⁹⁵ [Proposal for a Regulation](#) on methane emissions reduction in the energy sector and amending Regulation (EU) 2019/942

⁹⁶ *Ibid.*

to implementing upstream performance standards for methane emissions on all fossil gas and oil imports, and a commensurate standard for coal imports.

- To ensure full compliance with the EU's international obligations under the Paris Agreement, the EC may propose amendments to the Regulation to strengthen the requirements applicable to importers.

6. Industrial emissions

In April 2022, the EC presented a [proposal](#) to modernise [Directive 2010/75/EU](#) on industrial emissions. This text aims to reduce harmful emissions from industrial installations.

The emissions concerned are discharges of sulphur and nitrogen oxides, ammonia, particulate matter, methane and mercury from industrial facilities into the air, water and soil.

Installations carrying out the industrial activities listed in Annex I of Directive 2010/75/EU⁹⁷ must hold a permit and comply with the conditions set out therein. These permits, granted by the authorities in the Member States, take account of the installation's overall environmental performance (emissions into the air, water and soil, waste production, use of raw materials, energy efficiency, etc.). The permit conditions are based on best available techniques (BAT)⁹⁸. For certain installations, the Directive sets EU-wide emission limit values for certain pollutants. The Directive also contains a number of requirements in terms of environmental inspections: the competent national authorities will have to carry out regular inspections of installations.

The proposed revision includes the following new features:

- If existing permits are revised or new permit conditions established, MS authorities will have to apply stricter pollutant emission limit values.

⁹⁷ For example, energy industries, production and processing of metals, mineral industry, chemical industry and waste management. See the [complete list](#)

⁹⁸ In order to define BAT and the environmental performance associated with BAT at EU level, the Commission is organising an exchange of information with experts from the Member States, industry and environmental organisations. This work is being coordinated by the [European IPPC Bureau](#) at the EU Joint Research Centre in Seville (Spain). This process produces [BAT](#) reference documents (BREFs); the BAT conclusions contained in these reference documents are adopted by the Commission as Implementing Decisions. The Directive on industrial emissions requires these BAT conclusions to be the reference for setting permit conditions.

https://environment.ec.europa.eu/topics/industrial-emissions-and-safety/industrial-emissions-directive_en

- The EC is proposing to extend the scope to cover more industrial activities and livestock farms. At their plenary session on 11 July, MEPs rejected the Commission’s proposal to create a new threshold of 150 LU and to include cattle within the text’s scope of application. Parliament is proposing to maintain the current thresholds (i.e. poultry farms with more than 40,000 places, pig farms with more than 2,000 places and sow farms with more than 750 places) or to create a new threshold of 750 LU.

A new article 70a paragraph 1 concerning imported livestock products has been added to the [text](#) adopted by the European Parliament on 11 July 2023:

- “By [*the first day of the month following 24 months after the date of entry into force of the delegated act as referred to in paragraph 3*] products originating from rearing activities covered by chapter VIa may be placed in the EU market provided that the installation where the rearing activity takes place complies with uniform conditions of the operating rules referred to in this Article, or if the importers provide guarantees of origin from third countries deemed to be comparable in effectiveness. The competent authorities of the Member State where the imports take place shall verify the compliance of the imported products. The Commission shall by [*the first day of the month following 24 months after the date of entry into force of this Directive*] put forward a delegated act to establish a WTO-consistent methodology laying down the procedure for placing products on the Union market and the verification procedure for competent authority, to ensure a level playing field.”

7. Ecodesign rules for sustainable products

The [Proposal for a Regulation on Ecodesign for Sustainable Products](#), presented by the EC on 30 March 2022⁹⁹, is designed to implement the Green Deal’s ambitions to accelerate the transition to a circular economy. The [report](#) of the European Parliament’s Environment Committee was adopted in plenary session on 12 July 2023 and an initial trilogue took place on 30 August 2023.

The regulation sets out ecodesign requirements applicable to various categories of products (excluding food and animal feed)¹⁰⁰ placed on the EU market. Article 5 of the proposal for a regulation stipulates that the EC will lay down ecodesign requirements,

⁹⁹ Replacing Directive 2009/125/EC of the European Parliament and of the Council dated 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products.

¹⁰⁰ The text covers a much broader scope than the [Directive 2009/125/EC on ecodesign](#), currently in force, which only covers energy-related products. It also excludes certain sectors, such as food and animal feed.

according to the product groups concerned, aimed at improving the following aspects of products:

- Sustainability
- Reliability
- Possibility of re-use
- Possibility of improvement
- Repairability
- Possibility of maintenance and refurbishment
- Presence of substances of concern
- Energy consumption or energy efficiency
- Efficient use of resources
- Recycled content
- Possibility of remanufacturing and recycling
- Possibility of recycling materials
- Environmental impact, including carbon footprint and environmental footprint
- Expected waste production.

The regulation also contains a number of information requirements. Products can only be placed on the market or put into service if a product passport is available. This digital passport is designed to increase the level of information available to consumers and economic operators involved in the treatment, dismantling and recycling of end-of-life objects.

The regulation lays down the general framework and is intended to be supplemented by a number of secondary laws which will apply the main principles to various types of product. The process will be a long one, since the Commission plans to adopt four delegated acts each year, starting in 2024.

The EC is responsible for identifying priority product groups in order to carry out impact studies¹⁰¹. The information to be contained in the passport, for each type of product, will be specified in delegated acts. For 2024, three key sectors are targeted for the digital product passport: electrical and electronic products, batteries and textiles.

Certain rules will apply to imported products. The EC will adopt delegated acts to supplement the Regulation, for example with a view to imposing an obligation on manufacturers, their authorised representatives or importers to make certain parts of the technical documentation relating to the product concerned available to the Commission or market surveillance authorities in digital form without prior request (Article 4).

¹⁰¹ A list was submitted for [consultation](#) in the first half of 2023. It includes textiles, furniture, tyres, mattresses, detergents and paints, cosmetics, toys, fishing nets, ceramic products, glass, iron, steel, aluminium, paper, plastics and polymers, and chemicals. A working plan will be drawn up once the regulation has been adopted by the co-legislators.

Article 23 sets out the obligations of importers. The latter will only be able to place on the market products covered by a delegated act (pursuant to Article 4) and that comply with the requirements set out in the applicable delegated acts. Importers must ensure that:

- The appropriate conformity assessment procedure has been applied by the manufacturer and the manufacturer has drawn up the technical documentation
- The products comply with the information requirements relating to the aspects of the products listed in Article 5 of the Regulation
- The information requirements include, as a minimum, the requirements relating to the product passport (defined in the Regulation)
- The products are accompanied by information on their performance; information for end consumers on how to install, use, maintain and repair the product in such a way as to reduce its environmental impact and ensure optimum durability; information for treatment facilities on disassembly, recycling or disposal of the product at end-of-life
- A product passport is available in accordance with Article 8 and the delegated acts adopted pursuant to Article 4.

The importer must ensure that the product bears the required CE marking or another conformity marking referred to in an adopted delegated act, that it is accompanied by the required documents, and that the manufacturer has complied with the necessary requirements (set out in Article 21).

Where importers have reason to believe that a product does not comply with the requirements set out in the delegated acts, they shall not place the product on the market until it has been brought into conformity.

Importers must indicate their name, registered trade name or registered trademark and the postal address and, where applicable, electronic address at which they can be contacted either on the product, the packaging or, where applicable, in a product passport. They must also ensure that storage or transport conditions do not compromise its conformity.

Importers who consider or have reason to believe that a product they have placed on the market is non-compliant shall immediately take the corrective measures necessary to bring it into conformity, withdraw it or recall it. They will have to inform the market surveillance authorities of the Member States concerned of the suspected non-compliance and of any corrective measures adopted.

Importers will have to keep a copy of the EU Declaration of Conformity at the disposal of the market surveillance authorities for a certain period of time and ensure that the technical documentation can be provided to these authorities on request.

At the request of a national authority, importers will have to provide, on paper or in electronic form, the information and documents needed to demonstrate the conformity of a product.

Finally, under the terms of Article 28, certain obligations imposed on manufacturers will apply to importers and distributors. The latter will be considered as manufacturers:

- Where they place a product covered by an adopted delegated act on the market under their name or trademark;
- Where they modify such a product already placed on the market in a way that affects its compliance with the requirements set out in the delegated acts adopted pursuant to Article 4 by which the product is covered.

3. A RATIONALE TO BE APPLIED IN OTHER SECTORS OF THE EU ECONOMY

3.1. Animal welfare rules

In the Farm to Fork strategy, the EC commits to ensuring a higher level of animal welfare, particularly during transport and slaughter, and to examining the possibilities of animal welfare labelling. It plans to update the EU's animal welfare rules to ensure better alignment with the latest scientific evidence, to broaden the scope of animal welfare legislation and to make it easier to monitor compliance, thereby improving animal welfare in the EU more generally.

The revision of the animal welfare legislation is scheduled for the last quarter of 2023. The Commission plans to publish four proposals for regulations relating to rearing conditions, transport and slaughter, and animal welfare labelling. For the moment, only the Commission's draft impact assessment has been published¹⁰², the key points of which are as follows:

- Phasing out and prohibition of cage farming¹⁰³
- Ban on certain mutilations (e.g. end of castration for pigs).
- Ban on crushing of male chicks
- Increase available space for all species

¹⁰² See Contexte, "[Les sept principales mesures envisagées par la Commission européenne pour la refonte de la législation sur le bien-être animal](#)" [The seven key measures envisaged by the European Commission to overhaul animal welfare legislation].

¹⁰³ See the [Citizens' Initiative "End the Cage Age"](#)

- Limitation of transport times, without prohibiting exports to third countries. Animal transport is one of the most sensitive issues for Member States. The draft impact study recommends limiting transport time to two 21-hour shifts, separated by 24 hours' rest, with a 1-hour break every 10 hours and permanent access to water. For animals intended for slaughter, the limit would be 9 hours. In addition, if the outside temperature at the time of travel is between 25 and 30°C, transport time should be limited to 8 hours. Above 30°C, only night-time journeys would be permitted. The impact assessment recommends that exports of live animals to third countries should be subject to the same restrictions on transport times.
- Creation of an animal welfare label: optional (voluntary approach)

The draft impact study recommends reciprocity of these new requirements. The draft impact assessment acknowledges that the new obligations to be imposed on European livestock farms could lead to an increase in imports *“from third countries applying less stringent standards [...], which would undermine the impact of the EU measures”*. **This is precisely why we propose the introduction of mirror measures, within 10 years, for obligations relating to the use of cages, mutilations, available space and the slaughter of chicks.**

California’s legislation in this area is one of the most progressive in the world. Proposal 12, which came into force in 2022, lays down specific minimum space requirements for animals reared for food purposes. It effectively bans cages for laying hens, stalls for sows and individual pens for calves. The legislation also prohibits the marketing of imported products reared under these conditions. In May 2023, the US Supreme Court validated the legislation, making it effective for all products from July 2023¹⁰⁴.

3.2. Use of chemicals in the textile sector.

In its Chemicals Strategy for Sustainability¹⁰⁵, the Commission proposes the adoption of a strengthened legal framework to address environmental and health concerns. It undertakes to extend “the generic approach to risk management to ensure that consumer products – including, among other things (...) textiles – do not contain chemicals that cause cancers, gene mutations, affect the reproductive or the endocrine system, or are persistent and bioaccumulative”. The Commission is committed to minimising the presence of substances of concern in textile products by introducing new requirements.

¹⁰⁴ <https://sentientmedia.org/what-is-prop-12/>

¹⁰⁵ EC Communication of 14 October 2020, [Chemicals Strategy for Sustainability. Towards a Toxic-Free Environment](#), COM (2020)0667.

In its resolution of 1 June 2023 on an EU Strategy for Sustainable and Circular Textiles¹⁰⁶, the European Parliament:

- Points out that *“many products, including textile products, sold to European consumers do not comply with EU chemicals legislation such as REACH”*.
- *“Regrets the slow implementation of the Chemicals Strategy for Sustainability, and, in particular, expects the REACH Regulation to be revised”, and “urges the Commission to adopt the proposal without further delay and to deliver on its commitment to substitute as much as possible and otherwise **minimise the substances of concern in textile products placed on the EU market**”;*
- *“Expresses concern that around 60 chemicals in textile products placed on the EU market are considered as carcinogenic, mutagenic or toxic to reproduction”;*
- *“Recalls the Commission’s commitment in the Chemicals Strategy for Sustainability to ensure that consumer products do not contain chemicals that cause cancers, genetic mutations, affect the reproductive or endocrine system, or are persistent and bioaccumulative; urges the Commission to implement this commitment without delay, including through the adoption of the necessary legislative measures”;*
- *“Stresses that PFAS have proven to be extremely persistent in the environment and both their production and use have resulted in severe contamination of soil, water and food; highlights that PFAS are widely and commonly used in the textile industry; calls, therefore, for the stringent regulation of PFAS in textiles”.*

Examples of existing restrictions:

- Regulation (EU) 2016/26: NPE shall not be placed on the market after 3 February 2021 in textile articles which can reasonably be expected to be washed in water during their normal lifecycle, in concentrations equal to or greater than 0.01% by weight of that textile article or of each part of the textile article¹⁰⁷.
- Regulation (EU) 2018/1513: ban on the placing on the EU market of 33 substances classified as carcinogenic, mutagenic or toxic to reproduction (CMR substances) in clothing, related accessories and footwear if these articles are intended for consumers where the concentration of CMR substances exceeds

¹⁰⁶ [European Parliament resolution of 1 June 2023 on an EU Strategy for Sustainable and Circular textiles 2022/2171\(INI\)](#)

¹⁰⁷ [Regulation \(EU\) 2016/26](#) amending Annex XVII to Regulation (EC) No 1907/2006 (REACH) as regards nonylphenol ethoxylates (NPE)

the limits set¹⁰⁸. This restriction applies from 1 November 2020 (See [Entry 72 of Annex XVII of the REACH Regulation](#)). But this does not go far enough, since the EC had originally envisaged 286 substances, before drastically reducing its ambition to 33 substances¹⁰⁹.

Each of the restricted substances has different properties and is used in different processes in the textile and footwear industries, so [maximum concentration limits](#) have been set for individual substances or groups of substances. Retailers and companies that do not comply with these thresholds may be penalised and their products banned from being marketed in the EU.

The list of chemicals banned in textile products should be extended, with priority given to substances that are the most harmful to health and the environment, both in the EU and in producer countries.

3.3. Fishing practices

Regulation (EU) 2019/1241¹¹⁰ lists a number of fishing practices that are prohibited for the conservation and sustainable exploitation of fisheries resources. These prohibitions and restrictions apply to activities carried out by EU fishing vessels and nationals of Member States in the fishing zones referred to in Article 5 of the Regulation¹¹¹, as well as by fishing vessels flying the flag of and registered in third countries when fishing in EU waters.

¹⁰⁸ [Regulation](#) (EU) 2018/1513 amending Annex XVII to Regulation (EC) No 1907/2006 (REACH) as regards certain substances classified as carcinogenic, mutagenic or toxic to reproduction (CMR), category 1A or 1B

¹⁰⁹ <https://chemicalwatch.com/54806/commission-clarifies-scope-of-proposed-cmr-in-textiles-restriction>

¹¹⁰ [Regulation \(EU\) 2019/1241](#) of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures

¹¹¹ Article 5 “For the purposes of this Regulation, the following geographical definitions of fishing zones shall apply: a) ‘North Sea’ means Union waters in ICES divisions 2a and 3a and ICES sub-area 4; b) ‘Baltic Sea’ means Union waters in ICES divisions 3b, 3c and 3d; c) ‘North Western waters’ means Union waters in ICES sub-areas 5, 6 and 7; d) ‘South Western waters’ means ICES sub-areas 8, 9 and 10 (Union waters) and CECAF zones 34.1.1, 34.1.2 and 34.2.0 (Union waters); e) ‘Mediterranean Sea’ means the maritime waters of the Mediterranean to the East of line 5°36’ W; f) ‘Black Sea’ means waters in GFCM geographical sub-area 29 as defined in Annex I to Regulation (EU) No 1343/2011 of the European Parliament and of the Council; g) ‘Union waters in the Indian Ocean and the West Atlantic’ means waters around Guadeloupe, French Guiana, Martinique, Mayotte, Réunion and Saint Martin under the sovereignty or jurisdiction of a Member State; h) ‘NEAFC Regulatory Area’ means the waters of the NEAFC Convention Area which lie beyond the waters under the fisheries jurisdiction of the Contracting Parties as defined in Regulation (EU) No 1236/2010 of the European Parliament and of the Council; i) ‘GFCM Agreement area’ means the Mediterranean Sea and the Black Sea and connecting waters, as defined in Regulation (EU) No 1343/2011”.

It is therefore prohibited to capture or harvest marine species using:

- Toxic, stupefying or corrosive substances
- Electric current
- Explosives
- Pneumatic hammers or other percussive instruments
- Towed devices for harvesting red coral or other types of coral
- St Andrew's cross and similar grabs for harvesting, in particular, red coral or other types of coral
- Any type of projectile.
- Other restrictions apply to gear and conditions for their use¹¹² and to the use of nets¹¹³.

Mirror measures could be introduced in the fisheries sector to prohibit the import of fisheries products produced using techniques that are not authorised in the EU. While European regulations prohibit a number of fishing practices, the sale of products harvested using these practices is not prohibited. Recital 11 of Regulation (EU) 2019/1241 itself recognises that *“it should not be allowed to sell, display or offer for sale any marine species caught using such gear or methods where they are prohibited under this Regulation”*.

¹¹² Article 8 of [Regulation \(EU\) 2019/1241](#)

¹¹³ Article 9 of [Regulation \(EU\) 2019/1241](#)

ANNEX 2 - WTO OUTCRY AGAINST EUROPEAN MIRROR MEASURES

MIRROR MEASURES	OUTLINE OF TRADING PARTNERS' ARGUMENTS
<p>Import ban on products containing clothianidin and thiamethoxam residues</p>	<p>See, for example, the minutes of the SPS Committee meeting in November 2022¹¹⁴.</p> <ul style="list-style-type: none"> ● Questioning of the legal basis of the Regulation (i.e. MRL Regulation 396/2005). For example, Colombia considers that environmental aspects are beyond the scope of Regulation 396/2005 and are therefore inconsistent with EU law¹¹⁵. In the same vein, Uruguay and Paraguay consider that environmental objectives do not fall within the scope of the SPS Agreement and that MRLs should be set to protect human health and dealt with under the Codex¹¹⁶. ● Australia considers lowering MRLs to be an inappropriate approach for achieving environmental results: lowering should only be based on food safety risks. Taking environmental impacts into account when setting MRLs and assessing requests for import tolerances would threaten the ability of third countries to apply their own environmental policies, in contradiction with WTO rules¹¹⁷. ● Role of the Codex Alimentarius: Canada believes that MRLs should be maintained or harmonised with Codex MRLs if residues pose no risk to consumers. Lowering to default values when no food risk has been identified would be incompatible with WTO law. Canada defends the robustness of its regulatory system to protect consumers and the environment and points out that other multilateral for Members to develop global approaches to environmental challenges¹¹⁸. ● Criticism of the EU's extraterritorial approach: Argentina contests the extraterritorial approach adopted by the EU and its disregard for the principles of permanent sovereignty over natural resources and of common but differentiated responsibilities¹¹⁹.
<p>Ban on EU market access for animals and animal products treated with growth-promoting antibiotics</p>	<p>SPS Committee, Summary of the meeting of 9-11 November 2022, G/SPS/R/108, 16 December 2022.</p> <ul style="list-style-type: none"> ● US position: the EU should allow trading partners to use tools appropriate to the exporting country's own domestic context to meet the EU level of protection. The United States called on the EU to work with its trading partners to develop science-based measures, consistent with the relevant international standards, and to be mindful of the impact of its SPS measures on global animal health, food security, international trade and agricultural sustainability (...). ● Paraguay: concern about the EU's extraterritorial application of Regulation (EU) 2019/6, without considering the conditions of its trading partners. ● Uruguay: in case of significant regulatory changes, transition periods should take account of the realities of affected sectors and products. ● Japan regretted that the EU had not provided information, including the timeline for implementation of Article 118 of Regulation (EU) No 2019/6. It asked the EU to

¹¹⁴ Summary of the 9-11 November 2022 meeting of the Committee on Sanitary and Phytosanitary Measures, G/SPS/R/108, 16 December 2022: specific trade concern regarding Regulation 396/2005 (raised by India and supported by Colombia, Israel, Paraguay, Costa Rica, Uruguay, Brazil, Guatemala, China, Argentina and Canada)

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

	<p>provide a transitional period of at least 3 years before the implementation of the delegated act to third countries</p> <ul style="list-style-type: none"> • Canada expressed its support for coordinated international efforts to address AMR. It asked the EU to provide for a transition period of 5 years or more, based on the realities of production systems and product storage¹²⁰. • Brazil noted the potential burden caused by the introduction of trade restrictive sanitary requirements. Brazil asked the EU to consider the ongoing global efforts by the WHO, WHOA and FAO, as well as the work of the Codex Taskforce on Antimicrobial Resistance. Brazil reiterated the importance of a safe, harmonised and science-based framework for trade in animal products for the promotion of food safety and food security.
Carbon border adjustment mechanism	<p>Source: <i>WTO: India galvanizes South over North's unilateral environment measures (restricted Job document (Job/TE/78), titled "Concerns on Emerging Trends of Using Environmental Measures as Protectionist Non-Tariff Measures")</i>:</p> <ul style="list-style-type: none"> • India: the CBAM means prioritizing the unilateral policy of the importing country over that of exporting countries and imposes a unilateral vision of how to combat climate change, including the EU's CBAM. • The CBAM violates fundamental WTO rules and agreements. Reducing GHG emissions must remain a global effort based on the principles of equity and common but differentiated responsibilities.
Imported deforestation	<ul style="list-style-type: none"> • Indonesia and Brazil submitted a joint communication in November 2022 to the WTO's Committee on Agriculture¹²¹, regretting the EU's choice to use unilateral legislation instead of an international commitment to address the objectives of conservation and sustainable management of forests and combatting climate change. • Concerns about <i>"the uncertain and discriminatory nature of the scope of products, definitions that are not multilaterally agreed, retroactive cut-off date, burdensome due diligence mechanism, subjective risk assessment criteria, costly and impractical traceability and geolocation requirements, and insufficient, unilaterally-defined transition period, which could increase costs and have negative social and economic consequences for developing countries"</i>. • The two countries say they firmly believe that <i>"trade restrictions are inadequate to address environmental concerns"</i>. They also point out that the regulation <i>"disregards the local conditions and national legislations of developing producing countries, and their efforts to fight deforestation"</i>. • One observer indicated that Brazil and Indonesia, supported by Paraguay, Argentina and Ecuador, reiterated their opposition to the EU's approach at the last meeting of the Committee on Agriculture (held 27-28 March 2023)¹²². These countries once again cited the potential incompatibility of the regulation with WTO rules and its inability to recognise the different development statuses of producing countries.
Batteries	<p>Source: <i>Technical Barriers to Trade Committee, minutes of the meeting of 9-11 March 2022, G/TBT/M/86</i></p> <ul style="list-style-type: none"> • In China's view, the EU should regulate the carbon footprint after the battery product carbon footprint calculation method is unified and should set a scientific and reasonable carbon footprint threshold according to the carbon peak and carbon neutral targets of different Members.

¹²⁰ See also the document submitted by Canada, G/SPS/R/108

¹²¹ Joint Letter EU proposal for a regulation on deforestation-free products, submission by Indonesia and Brazil to the Committee on Agriculture (29 November 2022, [G/AG/GEN/213](#))

¹²² <https://twitter.com/RobFrancisEU/status/1640627857771692033?s=20>

	<p>The regulation establishes minimum percentages of recycled cobalt, lead, lithium or nickel in the active materials of industrial batteries, electric vehicle batteries and automotive batteries for 2030 and 2035, but the method for calculating and verifying recycled materials will not be defined until the end of 2025. China considers that it is unreasonable to set the minimum percentage of recycled content before specifying the scientific methodology.</p> <ul style="list-style-type: none">● Russia expressed its concern about the lack of scientific data and international standards to justify the proposed conditions for access to the EU market as well as material recovery targets for spent batteries. It urges the EU to pursue its efforts to reconcile climate policy and trade policy in compliance with WTO rules and the relevant climate agreements, without creating barriers to trade and while preserving a sufficient level of competition between imports and domestic manufacturing production.
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