

Recent Developments in EU Environmental Policy and Legislation

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Recent Developments in EU Environmental Policy and Legislation

Matteo Fermeglia¹

Abstract

This section briefly describes the significant political initiatives and acts of legislation in the environmental field adopted in the period from October 2020 until April 2021.

Keywords

European Green Deal EU Climate Law Drinking Water Biodiversity Strategy Sustainable Finance Soil Thematic Strategy

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1. Introduction and overview

Unsurprisingly, the efforts of the EU and the European Commission ~~over the last Semester~~over the last year have been mostly channeled towards the fight against the Covid-19 Pandemic to both ensure the uptake of the vaccination campaign and the kick-start of the economy under the unprecedented economic stimulus package NextGenerationEU. Nevertheless, ~~several important developments have occurred~~notable progress have been made ~~also~~ to advance the ambitious roadmap laid down under the European Green Deal.² The adoption of the European Green Deal, ~~albeit although initially~~ overshadowed by the onset of the ~~Pandemic~~corona-crisis, has undoubtedly marked a paradigm-shift in the EU's approach towards its environmental and climate objectives, with a view to enhance coordination among sectoral policies and full integration and mainstreaming of sustainability across EU policies. As noted by Ludwig Krämer on this journal, the European Green Deal for the first time puts the EU's environmental and climate objectives as drivers of economic growth.³ As a result of this shift, ~~remarkably~~, environmental and climate considerations are being closely embedded in a wide array of existing and forthcoming legislation as the EU is finally adopting an holistic approach synergically addressing the overarching objectives to ~~both~~ achieve both net-zero greenhouse gases emissions and ~~ensure~~ zero pollution by 2050. Several doubts and blind spots remain, however, as to the existing gap between the European Green Deal's ambitious

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¹ Assistant Professor of International and European Environmental Law, Hasselt University. Email: matteo.fermeglia@uhasselt.be.

² Commission Communication COM(2019) 640 final, The ~~European~~ European Green Deal.

³ See *L. Krämer, Planning for Climate and the Environment: the EU Green Deal*, JEEPL 2020 (17), p. 267, 268.

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objectives and its plan for implementation, as well as the social justice aspects of ensuring transformational change in the EU.⁴

Thus, the following paragraphs address the most important relevant legislative and policy developments in EU environmental law from October 2020 to April 2021. Such measures altogether contribute to all the 11 key objectives pursued by the European Green Deal, prominently including Climate Ambition, Preserving and Protecting Biodiversity, and Towards a Zero-Pollution Environment, and Mainstreaming Sustainability in All EU Policies, which will mostly relate to different European Green Deals's objectives, namely climate change mitigation, biodiversity protection, and financing the transition to a low carbon and more sustainable economy.⁵

3.2. European Parliament and Council reach a provisional agreement on EU Climate Law

After a lengthy negotiation process, on 21 April 2021 the Council and the European Parliament have reached a provisional agreement on the European Climate Law (EUCO 8440/21). The Regulation will have to be approved by both Parliament and Council before being published in the Official Journal and enter into force. The Commission tabled its proposal for the Climate Law on 4 March 2020.

When adopted, the European Climate Law will constitute the legal cornerstone of future EU's climate action under the European Green Deal. Fundamentally, it will establish legally binding targets with regard to greenhouse gases (GHGs) emission reduction by 2030 and 2040, together with the overarching objective of achieving net-zero emissions by 2050. Moreover, it will include both procedural and institutional safeguards to ensure oversight and monitoring over the actions taken to achieve the legally binding targets. Thus, the European Climate Law aims to provide a permanent legal framework to attain the 2018 long-term EU strategy for GHG emissions reductions,⁶ as well as the 2030 Climate Target Plan.⁷

⁴ See R. C. Fleming & R. Mauger, Green and Just? An Update on the 'European Green Deal', JEEPL 2021 (18), 164-180.

⁵ The text follows the taxonomy indicated in the European Green Deal Communication (supra n 1) as refined by Krämer, supra note 3, who delves into a comprehensive analysis of all the announced measures in the European Green Deal Communication further appraising their potential pitfalls as to their actual implementation.

⁶ Commission Communication COM(2018) 773 final, A Clean Planet for All: A European strategic long-term vision for a prosperous, modern, competitive and climate-neutral economy.

⁷ Commission Communication COM(2020) 562 final, Stepping up Europe's 2030 climate ambition investing in a climate neutral future for the benefit of our people.

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Furthermore, this marks a true stepping-up of EU's ambition in light of the Paris Agreement's long-term objectives, as well as will inform the upcoming EU's Nationally Determined Contributions under the Paris Agreement, after the last update submitted to the UNFCCC on 17 December 2020 by Germany (as acting Council President) and the European Commission.

The European Commission, in the words of Executive Vice-President for the European Green Deal Frans Timmermans, welcomed the agreement as "a landmark moment for the EU [...]" as a guide to our policies for the next 30 years. The Climate Law will shape the EU's green recovery and ensure a socially just green transition.⁸

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The provisional agreement deals with the following most contentious points as fundamental to the structure of the European Climate Law. In addition to the 2050 climate neutrality target, the deal contains the following elements:

1. The adoption of the legally binding European Union target of at least 55% reduction of net GHG emissions as compared to 1990. The European Parliament originally advocated a higher target of at least 60%; whereas the agreed target reflects that endorsed by the European Commission in its 2030 Climate Target Plan. The 2030 target will comprise both GHG emission reductions and removal by sinks. The priority of emissions reduction over removals has been a point of utmost discussion during the negotiations. Ultimately, a ceiling of 225 Mt CO₂e equivalent has been set as maximum contribution of removals as of 2030 upon request of the European Parliament. In addition, the agreement sets an aspirational commitment for the EU to strive to achieve negative emissions after 2050.
2. An interim 2040 GHG emissions reduction target will be set (if deemed appropriate), as be proposed by the Commission at the latest within six months after the first global stocktake carried out under the Paris Agreement, taking into account an indicative EU's GHGs budget for the period 2030-2050.
3. The need to enhance EU's carbon sinks has been recognized, mostly through a renewed and more ambitious LULUCF regulation, on which the Commission is expected to deliver a proposal in June 2021.

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⁸ European Commission, press release, Commission welcomes provisional agreement on the European Climate Law, 21 April 2021, IP/21/1828.

4. An independent European Scientific Advisory Board on Climate Change will be established under the European Climate Law. The Board will be composed of 15 senior scientific experts of different nationalities (with no more than two members having the same Member State's nationality) and will operate under 4-years mandates. The Board will work together with the European Environmental Agency, which will serve as its Secretariat. It will provide scientific advice on specific EU measures and indicative EU's GHGs budgets. In addition, it will report on the overall coherence between the actions taken by the EU, the targets adopted under the European Climate Law and the EU's international commitments under the Paris Agreement, in order to ensure that such actions are consistent with the expected mid and long-term GHGs emissions reduction trajectories.
5. The European Commission will commit to engage with the private sectors to create sector-specific roadmaps to achieve net-zero GHG emissions in different areas of the economy. For some sectors, such trajectories have already been elaborated under the 2050 climate neutral strategy.⁹ The Commission will monitor the development of such roadmaps, facilitate the dialogue at EU-level, and share best practices among relevant stakeholders.

Furthermore, according to the latest proposal submitted to the Council and Parliament by the Commission, on September 2020 (COM(2020) 563 final), the European Climate Law includes a mechanism of assessment by the same European Commission over national measures every 5 years under the National Energy and Climate Plans submitted pursuant to Regulation no. 2018/1999/EU (Energy Union Governance Regulation). Moreover, it empowers the European Commission to adopt delegated acts to set a trajectory at the Union level to achieve the 2030 and 2050 climate targets (and, if adopted, the 2040 interim target), with a view to reviewing it within six months after each global stocktake under art. 14 of the Paris Agreement.

For further information, see:

- [European Council, press release, 21 April 2021, 300/21 \(updated on 5 May 2021 to include the text of the agreement following approval by Coreper\)](#)

⁹ European Commission, In-depth analysis in support of the Commission Communication COM(2018) 773, Brussels, 28 November 2018.

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- European Commission, press release, Commission welcomes provisional agreement on the European Climate Law, 21 April 2021, IP/21/1828
- European Commission proposal for a Regulation establishing the framework for achieving climate neutrality and amending Regulation no. 1899/2019/EU, COM(2020) 80 final

4.3. EU adopts new rules on drinking water quality and access to water

Although high level of quality has been achieved with a high rate of compliance by Member States with the quality standards set by the Drinking Water Directive (no. 98/83/EC), access to water remains a major concern in the EU with water scarcity still affecting 11% of the EU population. The Commission embraced more ambitious commitments by endorsing the Safer drinking Water for all Europeans initiative in 2018 to ensure the right to access to water under the European Pillar of Social Rights, to the implement the European Citizens' Initiative "Right2Water", and to strengthen its action to achieve the UN SDGs.

Against this backdrop, following the adoption by the Council on 23 October 2020, ~~on 16 December 2020~~, the European Parliament adopted the Revised Drinking Water Directive ~~on 16 December 2020~~ (No. 2184/2020/EU).¹⁰ The proposal was tabled by the European Commission on 1 January 2018 as a result of the 2016 REFIT evaluation. Moreover, the revision of the Drinking Water Directive drew from the latest WHO guidelines for safe drinking water issued in 2017.

The Revised Drinking Water Directive entered into force on 12 January 2021. Member States must transpose the Directive into national legislation within two years. The key elements of the Revised Drinking Water Directives are:

- The introduction of reinforced water quality standards, even more stringent than those indicated in WHO's 2017 guidelines (Article 5 and Annex I).
- A special regime tackling emerging pollutants, such as endocrine disruptors and PFA's, as well as microplastics, to be implemented by the European Commission through delegated acts (Article 13).
- The adoption of a preventive, risk-based approach, favoring actions to reduce pollution at source (Article 7).

¹⁰ Parliament and Council Directive 2020/2184/EU on the quality of water intended for human consumption, OJ 2020 L 435/1.

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- The introduction of measures to ensure better access to water, particularly for vulnerable and marginalised groups, as well as to promote the use of tap water, also to reduce (plastic) bottle consumption (Article 16).
- Enhanced harmonisation of quality standards for materials and products in contact with water, to be further regulated at EU level with the support of the European Chemicals Agency (Articles 11-12).

For more information, see:

- European Commission press release, Commission welcomes final agreement on water quality and access to drinking water, 16 December 2020, IP/20/2417.
- European Commission proposal for Directive on the quality of water intended for human consumption (recast), COM(2017) 753 final.

5.4. European Commission on track to develop EU’s Natural Restoration Targets to implement the EU’s biodiversity strategy for 2030

Biodiversity protection is one of the main pillars of the European Green Deal, with specific regard to its key objective to restore its ecosystems in line with the UN Convention on Biological Diversity. To this end, the EU Biodiversity Strategy for 2030 (“Bringing nature back into our lives”) was adopted by the Commission on 20 May 2020.¹¹ The EU Biodiversity Strategy serves as the framework for concrete commitments and actions, in order to protect and restore degraded ecosystems by 2030 and manage them sustainably. The Commission invited the Council and the Parliament to formally endorse the strategy ahead of the 15th Conference of the Parties to the Convention on Biological Diversity, to be held on 11-24 October ~~11-24~~ 2021 in Kunming (China) after its postponement due to Covid-19. On 23 October 2020, the Council adopted conclusions endorsing the objectives of the strategy. The Council conclusions give political guidance as regards the implementation of the strategy and reaffirm the EU’s commitment to lead by example and make all efforts to agree a new ambitious post-2020 global biodiversity framework at CBD COP15 in 2021. The European Parliament plenary vote on the strategy is expected in April 2021.

¹¹ Commission Communication COM(2020) 380 final, EU Biodiversity Strategy for 2030: Bringing nature back into our lives.

The main objectives of the EU's Biodiversity Strategy are to bring forward a comprehensive response to increase EU's resilience against a series of future threats, such as the impacts of climate change, forest fires, food insecurity, and disease outbreaks - including by protecting wildlife and fighting illegal wildlife trade. These objectives are pursued through a comprehensive array of activities. The strategy includes: a) the establishment of a larger, EU-wide network of protected areas on land and at sea by strengthening and enlarging the existing Natura 2000 areas, and b) the launch of a far-reaching EU Nature Restoration Plan. In the first score, the strategy aims to ensure legal protection to a minimum of 30% of the EU's land area and 30% of the EU's sea area. The EU's Nature Restoration Plan will comprise measures addressing several aspects of biodiversity conservation, such as the reduction of pesticides' use by 50% by 2030, as set out in the 2020 Farm to Fork strategy; a review of the EU Pollinators initiative; a revision of the Thematic Strategy for Soil Protection; a roadmap for planting at least 3 billion additional trees in the EU by 2030, as part of the new EU Forest Strategy to be presented in 2021; a new action plan to conserve fisheries resources and protect marine ecosystems; the restoration of at least 25,000 km of rivers to a free-flowing state.

Before taking sectoral action, the Commission will put forward a proposal for a Regulation including legally binding EU nature restoration targets in 2021. The nature restoration targets will operate as benchmarks to ensure that by 2030, significant areas of degraded and carbon-rich ecosystems are restored; habitats and species show no deterioration in conservation trends and status; and at least 30% reach favorable conservation status or at least show a positive trend. The nature restoration targets will build on existing legislation, such as the Birds and Habitats Directives, the Water Framework Directive and the Marine Strategy Framework Directive. Moreover, other targets could be put in place addressing ecosystems, habitats or species not covered by existing legislation (such as pollinators or soils). The restoration targets will be subject to an impact assessment, in order to fine-tune the conditions in which they must be met, as well as the most effective measures to reach them.

Following the inception impact assessment published by the Commission on 4 November 2020, the public consultation process was launched from 11 January 2021 until 5 April 2021. The adoption of the proposal for a Regulation is planned in the fourth Quarter of 2021.

For further information, see:

- European Commission, Environment, Strategy, Biodiversity Strategy for 2030 – concrete actions
- European Commission Communication, EU Biodiversity Strategy for 2030 – Bringing nature back into our lives, COM(2020) 380 final

6.5. European Commission sets the roadmap to the new EU soil thematic strategy

As one of the most prominent elements of the EU's Biodiversity Strategy for 2030, soil protection is now getting back at the center of the European Commission's environmental policies. As announced in the EU's Biodiversity Strategy, by 2021 the new EU's soil thematic strategy will be launched by the Commission. The new Soil Thematic Strategy will aim to achieve the key objective of land degradation neutrality by 2030 as enshrined also in the EU's international commitments under the UNCCD and the UN SDGs. The revision of the EU's Soil Thematic Strategy was strongly advocated by both the EU Court of Auditors, the Council and the Parliament, and the European Environmental Agency as a necessary step to overcome the out-to-date 2006 strategy and fill relevant policy gaps by establish a comprehensive framework to address land and soil degradation in the EU.

In essence, the new EU soil strategy will pursue to following aims:

- Promote the adoption of sustainable soil management practices and thus accelerate the transition towards sustainable soil management and the necessary behavioral change.
- Set out actions to restore degraded soils and secure sufficient EU funding to this end.
- Improve the monitoring of soil quality.
- Adapt and improve the relevant EU policy framework in line with the European Green Deal objectives on climate neutrality, zero pollution, sustainable food systems and resilient ecosystems.
- Steer EU global action on soil under the Rio Conventions, EU external action and development cooperation.

The strategy will consolidate, complement and steer action in the different policy areas related to soil protection (most prominently, pollution prevention and agriculture) and guide the implementation of sustainable soil and land management practices. Furthermore, it will cover all key horizontal aspects from funding instruments to developing knowledge, research, communication and international cooperation.

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The consultation process towards the adoption of the EU soil thematic strategy has been closed on 27 April 2021. The adoption of the strategy is expected in the second quarter 2021.

For further information, see:

- European Commission, DG Environment news article, 2 February 2021 Commission consults on new EU Soil Strategy

7.6. European Commission adopts a set of delegated acts to implement its sustainable finance package

On 21 April 2021, the European Commission has adopted a set of delegated acts to implement its policy agenda on sustainable finance as further laid down in the Commission's action plan on sustainable finance launched in March 2018. The EU's sustainable finance policy is essentially aimed to steer and channel investments towards economic activities that can be considered as contributing substantially to attain EU's environmental and climate objectives under the European Green Deal – as further refined under the European Green Deal ~~investment~~ ~~Investment plan~~ ~~Plan~~.¹² Moreover, the sustainable finance agenda will help ensure that a truly resilient economy and a sustainable economy will be pursued in the recovery from the Covid-19 pandemic outbreak.

In this regard, the EU Taxonomy Regulation (no. 2020/852/EU), which entered into force on 12 July 2020, sets the main criteria to qualify companies, investors and financial market participants, whose activities shall be deemed environmentally sustainable.

The package thus comprises the following two documents:

1. The EU Taxonomy Climate Delegated Act, which develops technical screening criteria to define which activities contribute the EU's climate mitigation and adaption objectives.
2. A proposal for a Corporate Sustainability Reporting Directive (CSRD), which aims to thoroughly revise the existing Non-Financial Reporting Directive (no. 2014/95/EU); the CSRD will extend the EU's sustainability reporting requirements to all large companies and all listed companies while streamlining the reporting process for companies.

¹² [Commission Communication COM\(2020\) 21 final, Sustainable Europe Investment Plan, European Green Deal Investment Plan.](#)

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For further information, see:

- European Commission, Banking and Finance, Sustainable Finance
- European Commission press release, Commission takes further steps to channel money towards sustainable activities, 21 April 2021, IP/21/1804

8.7. Other legal acts and policy developments

i. 8th General Union Environmental Action Programme

Brief description: The European Commission's proposal for the 8th EU Environmental Action Programme to 2030 was published on 14 October 2020. It crucially builds on the European Green Deal and 7th EAP commitment to achieve while further pursuing the UN's 2030 SDGs agenda. On 17 March 2021, Member States granted mandate to the Council to enter into negotiations with the European Parliament on the 8th EAP. The final vote on the 8th EAP before the European Parliament's plenary is planned in June 2021.

Further info: COM(2020) 652 final; European Commission, Environment, Strategy, Environment Action Programme to 2030.

ii. Review of the Marine Strategy Framework Directive

Brief description: On 8 April 2021 (until 6 May 2021), the European Commission launched the consultation process for the review of the Marine Strategy Framework Directive (no. 2008/56/EC). The adoption of a revised Directive is planned in First quarter 2023.

Further info: European Commission, Environment, Marine and Coast, Coastal and Marine Policy.

iii. Environmental Damage Guidelines under the Environmental Liability Directive

Brief description: On 25 March 2021, the European Commission has issued a notice (2021/C 118/01) with detailed guidelines on the definition of environmental damage pursuant to art. 18(3) of the Environmental Liability Directive (no. 2004/35/EC). These guidelines aim to provide detailed guidance as to the scope of damages to water, land and protected species under art. 2 of the ELD. The guidelines are part of the efforts by the Commission to enhance implementation of the ELD after the REFIT evaluation in 2016.

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Further info: European Commission, Environment, Guidelines Environmental Liability Directive; Official Journal, C 118/1, 7.4.2021, 1-49.

iv. *EU Methane Strategy*

Brief description: On 14 October 2020, the Commission launched the EU Strategy to reduce methane emissions as part of the European Green Deal roadmap. The EU methane strategy will inform further cross-sectoral actions (e.g., on measuring and reporting) as well as the review of relevant EU environmental and climate legislation to better address CH₄ emissions in all economic sectors – notably, the Industrial Emissions Directive and the European Pollutant Release and Transfer Register.

Further info: COM(2020) 663 final; European Commission, Energy, European Green Deal; European Commission, press release, 14 October 2020, IP/20/1833.

v. *EU Chemicals Strategy for Sustainability*

Brief description: On 14 October 2020, the European Commission launched the [EU Chemicals Strategy for Sustainability](#). The Chemicals Strategy is part of the EU's net-zero pollution ambition under the European Green Deal. It will inform further proposals by the Commission, among others, on the phase-out of harmful chemicals (e.g., PFAS) and the establishment of a new risk assessment process for chemicals in the EU.

Further info: COM(2020) 667 final; European Commission, Environment, Strategy; European Commission, press release, 14 October 2020, IP/20/1839.

vi. *Second Clean Air Outlook*

Brief description: The Second Clean Air Outlook was published in January 2021. It presents the prospects for reducing air pollution in Europe up to 2030 and beyond. It updates the analysis presented in the First Clean Outlook, in particular by including the measures put forward by Member States in their National Air Pollution Control Programmes and an increased level of ambition for fighting climate change.

Further info: COM(2021) 3 final; European Commission, Environment, Air.

vii. *European Climate Pact*

Brief description: On 16 December 2020, the European Commission has officially launched through an online event the European Climate Pact initiative. The European Climate Pact aims at providing a common forum for the sharing of knowledge, information and best practices among all European citizens to support the implementation of the European Green Deal and the forthcoming EU Climate Law.

Further info: European Commission, European Climate Pact; The official website of the European Climate Pact is available at this link: https://europa.eu/climate-pact/index_en.

viii. *Batteries Regulation*

Brief description: The European Commission has tabled a proposal on 10 December 2020 for a Regulation on batteries and waste batteries. The proposed Regulation aims to repeal Directive 2006/66/EC and amend Regulation 2019/1020/EU.

Further info: COM(2020) 798 final; European Commission, Environment, Waste & Recycling, Batteries and accumulators.

ix. *New EU Climate Adaptation Strategy*

Brief description: The new EU Adaptation Strategy was adopted by the European Commission on 24 February 2021. The 2021 EU Adaptation Strategy follows the 2018 evaluation of the existing 2013 EU Adaptation Strategy and the public consultation run between May and August 2020. It aims to integrate the global goal on adaptation in Article 7 of the Paris Agreement and Sustainable Development Goal 13 action into EU law while strengthening the climate-ADAPT platform.

Further info: COM(2021) 82 final; European Commission, Climate Action, Adaptation to climate change; European Commission, press release, 24 February 2021, IP/21663.

N°	Title	Brief description	Source (Official Journal, webpage, etc.)
1	8 th General Union Environmental	The European Commission's proposal for the 8th EU Environmental Action	COM(2020) 652 final European Commission;

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Further info: COM(2020) 652 final
 European Commission, Environment, Strategy, Environment Action Programme to 2030

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	Action Programme	Programme to 2030 was published on 14 October 2020. It crucially builds on the European Green Deal and 7th EAP commitment to achieve while further pursuing the UN's 2030 SDGs agenda. On 17 March 2021, Member States granted mandate to the Council to enter into negotiations with the European Parliament on the 8th EAP. The final vote on the 8th EAP before the European Parliament's plenary is planned in June 2021.	Environment, Strategy, Environment Action Programme to 2030
2	Review of the Marine Strategy Framework Directive	On 8 April 2021 (until 6 May 2021), the European Commission launched the consultation process for the review of the Marine Strategy Framework Directive (no. 2008/56/EC). The adoption of a revised Directive is planned in First quarter 2023.	European Commission, Environment, Marine and Coast, Coastal and Marine Policy
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		the phase-out of harmful chemicals (e.g., PFAS) and the establishment of a new risk assessment process for chemicals in the EU.	
6	Second Clean Air Outlook	The Second Clean Air Outlook was published in January 2021. It presents the prospects for reducing air pollution in Europe up to 2030 and beyond. It updates the analysis presented in the First Clean Outlook, in particular by including the measures put forward by Member States in their National Air Pollution Control Programmes and an increased level of ambition for fighting climate change.	COM(2021) 3 final European Commission, Environment, Air
7	European Climate Pact	On 16 December 2020, the European Commission has officially launched through an online event the European Climate Pact initiative. The European Climate Pact aims at providing a common forum for the sharing of knowledge, information and best practices among all European citizens to support the implementation of the European Green Deal and the forthcoming EU Climate Law.	European Commission, European Climate Pact The official website of the European Climate Pact is available at this link: https://europa.eu/climate-pact/index_en

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8	Batteries Regulation	The European Commission has tabled a proposal on 10 December 2020 for a Regulation on batteries and waste batteries. The proposed Regulation aims to repeal Directive 2006/66/EC and amend Regulation 2019/1020/EU.	COM(2020) 798 final European Commission, Environment, Waste & Recycling, Batteries and accumulators
9	New EU Climate Adaptation Strategy	The new EU Adaptation Strategy was adopted by the European Commission on 24 February 2021. The 2021 EU Adaptation Strategy follows the 2018 evaluation of the existing 2013 EU Adaptation Strategy and the public consultation run between May and August 2020. It aims to integrate the global goal on adaptation in Article 7 of the Paris Agreement and Sustainable Development Goal 13 action into EU law while strengthening the climate ADAPT platform.	COM(2021) 82 final European Commission, Climate Action, Adaptation to climate change European Commission, press release, 24 February 2021, IP/21663

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Further info: COM(2020) 652 final
European Commission, Environment, Strategy, Environment
Action Programme to 2030

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