

Trump Second Term: Legal Tracker

EUROPEAN ENVIRONMENTAL REGULATIONS CONFRONTED IN THE TRUMP ERA

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SUMMARY

While the United States is moving backwards on the environmental front, the inflation of Europe's environmental legislation in recent years is clashing with its objectives of simplification and competitiveness called within the Draghi Report. Spread across three pieces of legislation – the Corporate Sustainability Reporting Directive (CSRD), the Corporate Sustainability Due Diligence Directive (CS3D) and the Taxonomy Regulation (Taxonomy) – the current EU sustainability framework is complex and presents risks of overlaps and inconsistencies.

Although the promise of a “European shock of simplification” via the much expected Omnibus Simplification Package marks an important step towards balance, its success will depend on the effectiveness of the measures taken to combine the ambition of extraterritorial scope for EU environmental regulations with competitiveness and economic dynamism.

As companies struggle with their first CSRD report (including their EU Taxonomy disclosure), the Omnibus package may introduce significant changes to reporting requirements. Yet, with the CSRD just becoming applicable and the CS3D not yet in force, many have questioned the timing and necessity of this initiative. Whether the Omnibus will force businesses to revisit their ESG strategies mid-stream and manage the legal uncertainty while ensuring compliance with existing regulations is key.

Amidst the EU regulatory whirlwind, ultimately the major challenge for businesses, wherever they are based, is that of a stable and predictable regulatory environment.

TRUMP'S ELECTION: AN ANTI-ENVIRONMENTAL SHIFT

There is no doubt, given the record of his previous term in office, that the election of Donald Trump as President of the United States on 5 November 2024 signals the end of environmental regulations

in the United States. The President-elect summed up his energy policy with the slogan 'Drill, baby, drill'. The message is clear: green will not be on the agenda.

Among the measures announced are a new exit from the Paris Climate Agreement, and the abolition of the Environmental Protection Agency and the National Oceanic and Atmospheric Administration.

This virulent opposition to environmental regulation is far from new in the Republican camp: In March 2023, 21 Republican state Attorneys General sent a letter to asset managers - including BlackRock - accusing them of breaching their fiduciary duties and violating antitrust laws because of their ESG investments and their support for climate risk disclosure by public companies; in December 2023, the Tennessee Attorney General filed suit against BlackRock on the grounds that ESG investments conveyed conflicting messages that confused consumers.

ESG measures adopted under the Biden administration, often established by executive order or administrative regulation, are particularly vulnerable because of the ease with which they can be reversed. This applies in particular to rules established by the federal agency responsible for regulating and supervising the financial markets (SEC), measures to reduce greenwashing within companies and those aimed at reducing or eliminating vehicle emissions.

While the United States is taking a step backwards on the environmental front, the European construction of ESG is proceeding apace, and there is a growing trend towards litigation in this area.

THE EUROPEAN LEGISLATIVE INFLATION IN THE ENVIRONMENTAL FIELD SOMEWHAT CURBED

In recent years, the European Union (EU) has adopted a number of regulations to protect the environment. These include the Green Taxonomy in 2020, which classifies economic activities according to their environmental sustainability; the Corporate Sustainability Reporting Directive (CSRD) in 2023, which strengthens companies' extra-financial reporting obligations; and the Corporate Sustainability Due Diligence Directive (CS3D) in 2024.

However, this inflation of European legislation is far from unanimous. In May 2023, French President Macron called for a 'European regulatory pause' on environmental standards in the name of competitiveness, arguing that they impose ever more obligations on large companies that are still too vague to comply with, and thus create a distortion with economic operators subject to other legislation.

Many believe that these regulations contribute to widening the gap between European companies and their competitors established in third countries (such as the United States or China) where - in many areas - regulations are less restrictive, if not non-existent.

At a time when the European rules of the game are gradually becoming more extraterritorial - with the CS3D encompassing non-European companies within its perimeter - European taxonomy is

intended to apply to all companies that market their products or services on European territory, as well as to all asset managers who market their savings products in Europe, and therefore in particular to American companies with a turnover in the EU in excess of €450 million. The US President-elect may seek to thwart Brussels' plans. 'America First' sums up his approach to trade policy: he could impose a postponement of EU sustainability regulations, or use the 1974 Trade Act to impose across-the-board customs duties on European countries that impose what he considers unreasonable regulations on US companies.

On 17 December 2024, the European Parliament adopted a one-year postponement of the entry into force of the European regulation aimed at combating deforestation. This regulation, which bans the marketing in the EU of certain products derived from deforestation (cocoa, coffee, soya, palm oil, wood, beef, rubber, leather, furniture, paper, etc.), has been decried: the US Department of Agriculture has expressed its concerns about the impact of this legislation on American producers and has urged that its implementation be postponed until the 'critical challenges' faced by American producers in complying with it have been resolved.

The Report on European Competitiveness submitted by Mario Draghi to Ursula von der Leyen in September 2024 stresses the urgent need to reconcile the rules of the Green Pact with the need to strengthen Europe's attractiveness and competitiveness. In this respect, the CSRD and CS3D directives are singled out for their complexity and cumbersomeness. In particular, the costs and organisational constraints inherent in complying with the reporting standards imposed by these regulations are criticised.

A Senate report of 4 December 2024 denounced the European Union's 'normative and technocratic drift' and called for European regulations to be simplified and improved. With regard to the CS3D, the information report notes that this text places heavy constraints on European companies and that its relationship with the CSRD raises serious questions.

On 10 December 2024, the Chairman of the French Accounting Standards Authority (Autorité des normes comptables) stressed the importance of non-financial reporting rules, while calling for them to be simplified. In particular, he suggested introducing greater proportionality by redefining the European concept of a large company.

As for Germany, in a letter dated 17 December 2024 from its Ministers of Justice, Finance, the Economy and Climate Protection, and in a letter dated 2 January 2025 from its Chancellor Olaf Scholz, asked the EU Commission to postpone and make the CSRD more flexible.

However, on 6 January 2025, the Collège des Directeurs du Développement Durable (C3D), which brings together more than 380 ESG managers from major French groups, called on the EU Commission to respect the original intention of the EU environmental regulations, noting that while these regulations - and the CSRD in particular - pose a challenge and raise legitimate concerns, particularly on the part of companies that are moving from a lack of responsibility in this area to

strict requirements in terms of sustainable development, many companies have already made significant progress in aligning themselves with this normative framework, so that a moratorium or a step backwards would run the risk of encouraging a culture of delay rather than encouraging the adoption of this normative framework. The C3D even goes so far as to ask the EU to bring forward by two years the date of application of the CSRD to non-European companies, from 2009 to 2027.

TOWARDS SIMPLIFIED EUROPEAN REGULATIONS TO RECONCILE CLIMATE AMBITIONS AND COMPETITIVENESS?

These aforementioned criticisms, which have been heard by the EU Commission, do not mark the end of EU environmental regulations, but the beginning of a new era: that of 'simplification'.

As early as September 2023, the President of the EU Commission stated in her State of the Union address that simplifying business life would be a priority, which led to the commissioning of Mario Draghi's European Competitiveness Report and the appointment in September 2024 of Valdis Dombrovskis as Commissioner for the Economy and Productivity with responsibility for simplification. In his report, Mario Draghi recommended reducing the administrative burden on businesses by creating a simplification commissioner whose task would be to reduce the regulatory burden on businesses. Presented as a priority in the EU Commission's next roadmap, the simplification of EU standards could have an impact on the environmental regulations referred to in the Draghi report as sources of 'administrative burden'.

On 8 November 2024, the President of the EU Commission announced her intention to propose new 'Omnibus' legislation aimed at simplifying or adjusting certain aspects of the CS3D, the CSRD and the green taxonomy, texts adopted in application of the Green Deal.

At the same time, EU leaders meeting in Budapest declared the need for a 'shock of administrative and regulatory simplification' to strengthen 'the competitiveness of the EU' through a 'simplification revolution' to provide businesses with a clear, simple and intelligent regulatory framework. Although the Omnibus simplification package has been announced for 26 February 2025, its content is still uncertain.

EU Commission Vice-President Stéphane Séjourné is promising a 'European regulatory shock' to ensure decarbonisation and competitiveness. The options mentioned include the facilitation of permits for industrial installations with accelerated access to EU funds and the revision of controversial texts such as the CS3D and the CSRD.

While the promise of regulatory simplification marks an important step towards balance, its success will depend on the effectiveness of the measures taken to combine the ambition of extraterritorial scope for EU environmental regulations with competitiveness and economic dynamism.

Ultimately, the major challenge facing companies, wherever they are based, is that of a stable and predictable regulatory environment.

This article was written with Intern, Camille Toulorge

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