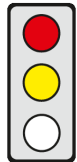


KEY ISSUES

Objective of the Communication: The Commission is announcing numerous measures to create a circular economy which aims to increase economic growth whilst also reducing the use of resources.

Affected parties: Companies, consumers, authorities



Pro: EU-wide convergence of relevant product details, standards and criteria will strengthen the internal market and increase transparency.

Contra: (1) The rules being propagated for the circular economy will harm growth if the use of primary raw materials would be less costly.

(2) Product requirements such as “durability” and “reparability” are very vague and allow too much scope for interventionist requirements.

(3) The “right to repair” including the “right to update obsolete software” for certain electronic devices is a significant encroachment upon the freedom to conduct a business and freedom of contract.

The most important passages in the text are indicated by a line in the margin.

CONTENT

Title

Communication COM(2020) 98 of 11 March 2020: A new **Circular Economy Action Plan** - For a cleaner and more competitive Europe

Brief Summary

► Context and objectives

- It is the aim of a “circular economy”, during the life cycle of products – design, manufacture, demand and use as well as waste management – [Action Plan for the Circular Economy COM(2015) 614, p. 2–4, see [cepPolicyBrief No. 2016-6](#)]
 - to safeguard resources,
 - to avoid or reduce waste completely or as far as possible and
 - channel materials back into the economic cycle.
- Changing to a circular economy should [p. 2]
 - increase economic growth whilst also reducing the use of resources;
 - lower the dependency on “primary raw materials” – such as oil – obtained from the natural environment;
 - make companies more profitable and the EU more internationally competitive;
 - contribute to achieving the objective of EU “climate neutrality” by 2050 [see [cepPolicyBrief No. 2020-3](#)].
- The Commission is announcing numerous measures for the creation of a circular economy. These relate to
 - various phases of the product life cycle such as the design, manufacture and demand of products as well as waste management;
 - resource-intensive products such as electronic devices, batteries, vehicles, packaging and plastics.

► Product design

- The Commission criticises the fact that in a linear “take-make-use-dispose” society, manufacturers do not have “sufficient incentives” to make their products “more circular” [p. 3].
- The current Ecodesign Directive [2009/125/EC, see [cepPolicyBrief](#)] regulates the establishment of binding requirements for the “ecodesign” of certain “energy-related products” in order to reduce the consumption of natural resources and energy as well as other harmful environmental impacts [p. 3].
- The Commission wants to extend the scope of the Ecodesign Directive “to the broadest possible range of products” [p. 4] in order to be able to lay down binding requirements for them. These include [p. 4]
 - the durability, reparability, reusability and recyclability of products;
 - increasing the content of recycled “secondary raw materials” (“recycled content”) in products.

► Product manufacture

- Under the current Industrial Emissions Directive [2010/75/EU, see [cepPolicyBrief](#)], operators of industrial installations must limit pollution emissions from production processes in accordance with the “Best Available

Techniques” (BAT). The Commission issues “BAT reference documents” containing mandatory limits on emissions [p. 6].

- In order to bring “greater circularity” to production processes, “circularity” will be incorporated into the requirements applicable to the “Best Available Techniques” under the Industrial Emissions Directive [p. 6].

► **Product demand**

- In order to make consumers buy “more circular products”, they will receive “trustworthy and relevant information” [p. 5] about their durability, reparability, reusability, recyclability and the recycled content.
- In view of the buying power of the public purse, which amounts to approx. 14% of EU GDP, the Commission wants to turn the previously non-binding guidelines regarding minimum criteria and targets for “green public procurement” into mandatory requirements [COM(2008) 400, see [cepPolicyBrief](#)][p. 5].

► **Waste management**

- By comparison with using primary raw materials in product manufacture, recycled material is often of lower quality, too expensive and not sufficiently available on the market. The Commission therefore wants to encourage a well-functioning internal market in the EU for high-quality, competitive and available recycled materials [p. 14].
- In order to be able to recover high-quality recycled material, EU-wide rules will be established for [p. 14]
 - separate collection of different types of waste;
 - the sorting of waste and removal of contaminants.
- In order to increase confidence in the quality of recycled material, EU-wide standards will be developed [p. 14].
- In order to reduce barriers to the cross-border transport of recycled materials in the internal market as a result of varying ways in which Member States implement the EU waste law, EU-wide criteria will be established to determine when a material no longer has to be classified as waste by the Member States but as recycled material [“end-of-waste status”, Art. 6 Waste Framework Directive (2008/98/EC)].

► **Electrical devices**

- The Commission criticises the fact [p. 7] that
 - fully or partially functional electrical devices are discarded because their design prevents repair, the battery cannot be replaced, or the software is no longer up to date;
 - less than 40% of electronic waste is recycled in the EU.
- The Commission is calling for [p. 7]
 - consumers to be given a “right to repair” for certain electrical devices including a “right to update obsolete software”;
 - binding requirements to be established under the Ecodesign Directive for the durability, reparability and recyclability of mobile phones, tablets and laptops.

► **Batteries and vehicles**

- The Commission wants rules to make the value chain for batteries and electric vehicles “more circular” [p. 7-8].
- The Commission wants rules on mandatory recycled content for [p. 8]
 - batteries, by means of new legislation;
 - for certain materials in vehicle components by means of an amendment to the End-of-life Vehicles Directive [2000/53/EC].

► **Packaging**

- The Commission criticises the fact that packaging waste is still increasing considerably in the EU [p. 8].
- The Commission wants [p. 8-9]
 - to establish binding requirements in the Packaging Directive [94/62/EC]
 - for the recyclability of packaging,
 - to reduce “(over)packaging”,
 - to restrict the use of some packaging materials where alternatives are available, or products can be “handled” safely even without packaging;
 - to introduce uniform EU-wide labelling on packaging to help consumers with “correct separation” of different types of packaging waste.

► **Plastics**

- According to the Commission, consumption of plastics is expected to double in the next 20 years [p. 9].
- For plastic in certain products – such as vehicles and packaging – the Commission wants mandatory requirements on recycled content [p. 9].
- As regards “microplastics” – plastic particles less than 5mm in diameter – the Commission wants to [p. 9]
 - investigate the risks to the environment, drinking water and foods;
 - develop methods for measuring and preventing the unintentional release of microplastics, e.g. from tyres and textiles.

- The Commission criticises the fact that – contrary to their labelling by companies as “biodegradable” or “compostable” – many plastics can only be broken down in composting plants under special conditions which do not exist in nature. It therefore wants to establish uniform EU criteria for the labelling of plastic products as “biodegradable” or “compostable” to ensure that consumers can dispose of them properly [p. 9-10].

Statement on Subsidiarity by the Commission

As, according to the Commission, the transition to a circular economy will be “deep”, cooperation at all levels – local, regional, national, EU and international – is necessary [p. 19].

Policy Context

The Commission formulated the “Vision of a Circular Economy” in the 7th EU Environment Action Programme (2013–2020) [COM(2012) 710, see [cepPolicyBrief No. 2013-25](#)] which it then defined in its Action Plan for the Circular Economy (2015–2019) containing over 50 measures [COM(2015) 614, see [cepPolicyBrief No. 2016-6](#)], its Strategy for Plastics [COM(2018) 28, see [cepPolicyBrief No. 2018-10](#)] and its considerations on EU Product Policy and the Circular Economy [SWD(2019) 91]. At the end of 2019, the Commission announced a new Action Plan for the Circular Economy in its “European Green Deal” [COM(2019) 640, see [cepAdhoc](#)].

Options for Influencing the Political Process

Directorates General: DG Environment

ASSESSMENT

Economic Impact Assessment

A circular economy can help to safeguard resources and reduce dependency on primary raw materials through the use of recycled materials. **It cannot, however, guarantee – as the Commission implies – that companies will automatically become more profitable or the EU more internationally competitive. The rules being propagated by the Commission for the circular economy will, on the contrary, harm growth if the use of primary raw materials would be less costly** than for example the use of recycled materials.

The envisaged binding **product requirements such as “durability” and “reparability” are very vague and thus allow too much scope for interventionist requirements.** The Commission should specify the cases in which this is actually a problem because consumers are currently already able to find out about the durability and reparability of a product before making their decision to purchase.

The use of recycled product or packaging materials may safeguard resources but is not always preferable even on environmental grounds – which take account of overall impact on the environment throughout the entire life cycle – due to an “ecological conflict of objectives”. Thus, the use of recycled materials can make products or packaging heavier. Under EU waste law, however, waste must be prevented in order of priority [“Waste hierarchy”, Art. 4 Framework Waste Directive (2008/98/EC)].

Manufacturers should not be obliged to use a minimum amount of recycled material in products and packaging as this will not necessarily result in recycled materials actually becoming available on the market in sufficient quantity and quality. As on any market, shortage causes price increases, and these have a negative effect on production costs and consumer prices.

The Commission’s call for **including “circularity” as a requirement for the “Best Available Techniques”** pursuant the BAT reference documents for production processes under the Industrial Emissions Directive, is still very vague. In principle, it **harbours the risk of significant red tape and cost burdens** for the industries concerned.

EU-wide convergence of product details, standards and criteria relevant to the circular economy **will strengthen the internal market and increase transparency.**

Standard, EU-wide, “trustworthy and relevant information” on the durability, reparability, reusability and recyclability of products may help consumers to make informed choices. At the same time, however, the aforementioned “ecological conflict of objectives” should be considered and made public. In addition, when it comes to product labelling, terms such as “durability” or “reparability” must be clearly defined and factually substantiated. Nevertheless, there is a risk of a high degree of arbitrariness regarding the choice of criteria to be used.

EU-wide standards for the quality of recycled materials may help to reduce uncertainty among market players and increase demand and willingness to pay on the part of purchasers thereby making high-quality recycling profitable and turning it into a feasible business model in the internal market.

EU-wide criteria enabling Member States to classify the “end of waste status” of recycled material may remove administrative barriers and cost burdens for companies in cross-border transport and strengthen the internal market.

A “right to repair” for electrical devices not only threatens to significantly restrict product design options but may also produce major inefficiencies where repairs are disproportionately labour intensive. In addition, the necessity to make devices repairable, which results from a right to repair, may also involve an increase in weight and greater use of materials, for example because production components can no longer be attached with glue or solder but must be bolted in place individually. Firstly, this runs counter to the objective of the circular economy to consume fewer resources and, secondly, also results in inefficiencies.

Although binding requirements for the recyclability of packaging may help to safeguard resources, they also highlight an “ecological conflict of objectives”. Thus, plastic packaging made up of varying types of plastics is often lighter and therefore produces less waste whilst at the same time plastic packaging made from just one type of plastic is easier to recycle. Apart from protecting a product, packaging provides manufacturers with an opportunity to market their product and thereby set it apart from other competing products. Both the requirement – which in addition is too vague – to reduce “over-packaging” and the ban on certain packaging materials allow too much regulatory scope for intervention in the design options of packaging manufacturers.

Standard EU criteria for labelling plastic products as “biodegradable” or “compostable” may avoid misleading information and make it easier for consumers to dispose of plastic products appropriately.

Legal Assessment

Legislative Competency

Unproblematic. The EU can adopt environmental measures for the “prudent and rational” use of natural resources and for waste management [Art. 192 TFEU].

Subsidiarity

The Commission’s sweeping claim that the transition to a circular economy will require cooperation at all levels [p. 19] does not generally justify EU action pursuant to the principle of subsidiarity [Art. 5 (3) TEU]. In fact, specific EU measures must be carefully examined in the individual case as to whether their objectives can be more effectively realised at EU level or by the Member States. EU action is justified in cross-border situations such as the envisaged creation of an internal market for recycled material. This applies e.g. to EU-wide standards and criteria for the standard EU-wide application of the “end of waste status” of recycled material.

Compatibility with EU Law in other Respects

The Commission’s envisaged “right to repair” including the “right to update obsolete software” for certain electronic devices is a significant encroachment upon the protected fundamental freedom to conduct a business including freedom of contract which specifically requires justification [Art. 6 (3) TEU; Art. 16 EU Charter of Fundamental Rights]. Before establishing these consumer rights, a careful examination should be made as to whether their actual wording meets this requirement for justification.

Conclusion

A circular economy may help to reduce the dependency on primary raw materials. It cannot, however, guarantee that companies will become more profitable or the EU more internationally competitive. The propagated rules for the circular economy will harm growth where the use of primary raw materials would be less costly. Product requirements such as “durability” and “reparability” are very vague and allow too much scope for interventionist requirements. Manufacturers should not be obliged to use a minimum amount of recycled material as this will not necessarily result in recycled materials actually becoming available in sufficient quantity and quality. Including “circularity” as a requirement for the “Best Available Techniques” harbours the risk of significant red tape and cost burdens. EU-wide convergence of relevant product details, standards and criteria will strengthen the internal market and increase transparency. The “right to repair” including the “right to update obsolete software” for certain electronic devices potentially represents a significant encroachment upon the right to conduct a business and freedom of contract.