**Follow up to the European Parliament non-legislative resolution on the liability of companies for environmental damage**

1. **Rapporteur:** Antonius MANDERS (EPP / NL)
2. **Reference numbers:** 2020/2027 (INI) / A9-0112/2021 / P9\_TA-PROV(2021)00259
3. **Date of adoption of the resolution:** 20 May 2021
4. **Competent Parliamentary Committee:** Committee on Legal Affairs (JURI)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The Parliament’s resolution proposes an extensive set of actions to address company misconduct that causes environmental damage.

The primary focus is the Environmental Liability Directive, 2004/35/EC (ELD), which makes certain companies liable to prevent and remedy damage to protected species and natural habitats, water and land. The resolution draws attention to limitations in the current scope of the ELD, weaknesses in its current provisions and shortcomings in its implementation. It calls for Commission actions aimed at transforming the directive into a regulation, expanding its scope and improving its implementation.

The resolution places the reform of the ELD in a much wider context that takes in the role of administrative, civil and criminal law in holding companies accountable for environmental damage. This means that, while the primary focus is the ELD, there are many points – even a majority – which cover topics other than the ELD.

The resolution calls for an expansion of the ELD into areas of traditional civil liability, i.e. liability for damage to health and property arising from company misconduct. These currently lie outside the scope of the ELD, which only covers damage to certain natural resources. In addition, the resolution calls for a strengthened role for redress mechanisms for victims of environmental damage.

The resolution addresses the Environmental Crime Directive, 2008/99/EC, under which companies can face sanctions for a set of serious offences involving infringements of EU legislation relating to the environment. It asks that this instrument be updated and that a range of ancillary measures be taken.

The resolution calls for legislation on environmental inspections (inspections being a means of detecting company misconduct) as well as actions on a miscellaneous set of topics related to the main theme: the Non-financial Reporting Directive; due diligence; procurement contracts; the Transparency Register; and trade-related provisions such as the role of the Chief Trade Enforcer.

The wide-ranging approach of the resolution is a recognition that company misconduct for environmental damage can bring into play not only the liability regime of the ELD but the criminal sanctions’ provisions of the ECD and a range of other possible consequences under civil and administrative law.

1. **Response to the requests and overview of the action taken, or intended to be taken, by the Commission:**

As an initial general remark, and subject to the specific comments set out below, the Commission shares the Parliament’s position that ensuring the liability of companies for environmental damage may, depending on the circumstances, justify measures falling under administrative, civil and criminal law. The Commission welcomes the wide-ranging nature of the resolution, and the references to many different instruments and initiatives that are relevant to the subject-matter.

Taking account of the range of actions requested by the Parliament, the Commission structures the present response under three broad headings: the Environmental Liability Directive, civil liability and redress mechanisms; the Environmental Crime Directive and the enforcement chain; and company reporting, due diligence, voluntary approaches, trade and other matters.

***Environmental Liability Directive, civil liability and other redress mechanisms***

In terms of possible legislative revision of the ELD, **paragraph 10** of the resolution calls for it to be revised as soon as possible and to be transformed into a fully harmonised regulation in order to achieve a level playing field for EU industry**. Paragraph 24** expresses the view that most definitions in the ELD, notably ‘environmental damage’ and ‘operator’, should be further clarified and where appropriate extended. **Paragraph 25** calls for an alignment of the ELD revision with the Paris Agreement. **Paragraph 28** calls on the Commission to consider the scope of coverage of occupational activities listed in Annex III of the ELD. **Paragraph 38** asks the Commission to assess the introduction of secondary and chain liability. **Paragraph 40** calls for the restriction of optional defences based on the economic operator holding a permit or using state-of-the-art techniques. **Paragraph 41** asks the Commission to examine the possibility of aligning the ELD with civil liability legislation in some circumstances (‘Dieselgate’ is referenced). **Paragraph 43** calls for an assessment of the introduction of mandatory financial security for economic operators and **paragraph 44** asks the Commission to assess the introduction of a financial compensatory scheme at EU or national level where there is inadequate coverage.

The Commission welcomes the Parliament’s identification of specific topics to be addressed in a possible revision of the ELD. The Commission will soon start work on a second evaluation of the directive in line with Better Regulation principles. This evaluation is due to be completed by April 2023. The Parliament’s resolution therefore comes timely in the policy cycle, enabling the Commission to factor in the Parliament’s views in the evaluation process. The outcome of the evaluation cannot be prejudged at this stage.

Without prejudice to the outcome of the evaluation, the Commission offers the following observations on the Parliament’s recommendations:

* Transforming the ELD from a directive into a regulation as proposed in **paragraph 10** might indeed contribute to ensuring a more uniform approach to liability. Experience indicates, however, that divergent approaches to the ELD across the EU relate to factors such as differing interpretations of key definitions and concepts, which are unlikely to be resolved by a change in the instrument’s form alone.
* **Paragraphs 24, 28, 38, 40 and 43** focus on legislative fine-tuning of the existing ELD regime. The Commission would agree that all of these issues deserve close examination in the light of experience and developments. It recognises, for instance, that the list of occupational activities in Annex III is now outdated, given the replacement of several legal instruments mentioned there.
* With regard to **paragraph 28,** although the natural resources covered by the ELD do not at present include air (being limited to protected species and natural habitats, water and land), the ELD contributes to climate action through the concept of ‘natural resource services’, since many natural habitats provide carbon storage or sequestration services. The provisional agreement reached by the co-legislators on the European Climate Law enshrines in legislation the EU’s commitment to reaching climate neutrality by 2050, in line with the objectives of the Paris Agreement. It also provides for the Commission to assess the consistency of any draft measure or legislative proposal with the climate-neutrality objective and the other Union climate targets before adoption. The forthcoming evaluation of the ELD provides a good opportunity to assess the role of the ELD in pursuing the climate objectives of the Union. In line with the general principle set out in Article 7 of the Treaty on the Functioning of the European Union (TFEU), this assessment should take into account not only the ELD-specific aspects, but also the broader context of Union policies and measures pursuing climate objectives, and applying to various sectors of the Union’s economy and thereby operators active in those sectors.
* With regard to **paragraph 41** on civil liability, the ELD is designed to prevent and remediate damage to natural resources rather than to prevent, or provide monetary compensation for damage to the property or health of individuals. There is indeed some overlap: preventive and remedial action under the ELD may prevent harm to individuals who are victims of environmental damage and who might, independently, be entitled to bring traditional tort-law claims against economic operators for adverse effects on their property or health. Changing the ELD to cover traditional tort claims and remedies would involve a fundamental re-design, however. Without drawing conclusions at this stage, the Commission would observe that there are other possible mechanisms of relevance.
* At **paragraph 20,** the resolution draws attention to Directive 2020/1828/EU, which applies to representative actions brought against infringements by traders of the provisions of Union law referred to in Annex I (which includes a limited number of instruments of environmental relevance) that harm or may harm the collective interests of consumers. While this has limited environmental coverage and is confined to the interests of consumers, the Member States may apply the mechanism of representative actions set out by the Directive for the protection of interests not covered by its scope of application and in all areas of law, including damage of an environmental character (see recital 18). Moreover, in the areas of law outside the scope of Directive 2020/1828/EU, the Commission Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (2013/396/EU) continues to be relevant. In addition, individuals adversely affected by environmental pollution caused by individual or multiple polluters have means of redress via administrative law. In particular, the Court of Justice has recognised that EU environmental legislation aimed at protecting human health confers rights to bring legal challenges against the responsible national authorities for acts or omissions that contravene that legislation: see paragraphs 48 to 52 of the Commission Notice on access to justice in environmental matters (OJ C 275, 18.8.2017, p. 1–39). In the context of air pollution, the Court has also drawn attention to the possible relevance of state liability (see paragraphs 54 and 55 of the Court’s judgment in Case C-752/18, *Deutsche Umwelthilfe eV*, ECLI:EU:C:2019:1114).
* With regard to **paragraph 44,** the Commission draws attention to the possibility for remedial action under existing or envisaged EU funding instruments in circumstances where the ELD is currently inapplicable or incapable of ensuring that a specific economic operator meets remediation costs. For example, Member States and regions can draw on the cohesion policy funds (in particular the European Regional Development Fund, the Cohesion Fund and the Just Transition Fund**)** for investments in regeneration and decontamination of brownfield sites and land restoration, taking into account the ‘polluter pays’ principle, if such a priority is included in the relevant programmes.

In terms of possible non-legislative measures related to the ELD, **paragraph 14** stresses the importance of soft-law instruments. **Paragraph 15** calls for the creation of an EU ELD task force. **Paragraph 16** calls for improved ELD data collection and **paragraph 17** for a comprehensive monitoring system. **Paragraph 18** calls for protection and support schemes for victims of environmental damage. **Paragraph 19** calls on the Commission to assess the efficiency of rapid claim mechanisms with a view to ensuring swift compensation for victims in insolvency cases. **Paragraph 26** calls for a study on how diffuse pollution is addressed in the different ELD liability regimes. **Paragraph 27** calls for clarification and guidance on ‘significant damage’.

The Commission agrees with the Parliament on the value of accompanying non-legislative measures. The first evaluation of the ELD, completed in 2016, led to a series of such measures, and the Parliament’s recommendations will be taken into account in the upcoming evaluation. Without prejudice to the evaluation, the following are more specific observations:

* The Commission considers that it has already responded to p**aragraph 27** through its adoption in March 2021 of the Guidelines providing a common understanding of the term ‘environmental damage’ as defined in Article 2 of Directive 2004/35/EC (OJC 118, 7.4.2021, p.1). As the guidelines make clear, significance is an integral aspect of the definition of ‘environmental damage’.
* As the Guidelines on environmental damage also make clear, assessing and determining environmental damage can be complex and call for a range of expertise. The EU ELD task force mentioned in **paragraph 15** might provide such expertise. The Commission would express doubt, however, as to the feasibility of an EU-level body being able to help in relation to many complex local assessments and determinations of environmental damage. It would mention existing practical work being done by IMPEL, the European network of environmental inspectorates, through its CAED project with financial support from the LIFE Regulation: see [Criteria for the Assessment of the Environmental Damage (CAED) (impel.eu)](https://www.impel.eu/projects/criteria-for-the-assessment-of-the-environmental-damage-caed/). This focuses on the practical steps involved in identifying and following up evidence of environmental damage and, as such, is complementary to the Commission’s Guidelines on environmental damage.
* With regard to **paragraphs 16 and 17** on data and monitoring, the Commission confirms that it is also concerned about the lack of consistent Member State data on damaging occurrences that come within the scope of the ELD.
* As regards the study on diffuse pollution mentioned in paragraph 26, the ELD stipulates that the directive shall only apply to environmental damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators. There is therefore a
qualified but not a blanket exception for diffuse pollution. Against this background, the Commission will take into account the Parliament’s request when undertaking the upcoming evaluation of the ELD.
* As for the victims of environmental damage mentioned in **paragraphs 18 and 19**, the ELD currently entitles natural or legal persons affected or likely to be affected by environmental damage as defined in the ELD to request the competent authority to take action and to bring legal challenges against the decisions, acts or failure to act of the competent authority. As is demonstrated by its 2017 Notice (OJ C 275, 18.8.2017, p. 1–39), its related published Citizens Guide ([https://ec.europa.eu/
environment/aarhus/pdf/guide/ENV-18-004\_guide\_EN\_web.pdf](https://ec.europa.eu/environment/aarhus/pdf/guide/ENV-18-004_guide_EN_web.pdf)) and its 2020 Communication on the matter (COM(2020) 643 final), the Commission attaches high importance to securing effective access to justice in environmental matters, including with regard to the ELD. The Commission’s E-Justice Portal is currently being updated with regard to environmental access to justice, and the update will include country-specific information on access to justice under the ELD. This should help those affected by environmental damage to better understand their rights of redress under the ELD.
* Also with reference to **paragraphs 18 and 19**, the Commission recognises that, regardless of whether they come within the scope of the ELD, environmental nuisances may create justified grievances and that victims may submit those grievances to the competent public authorities. As part of its 2018 Action plan on environmental compliance assurance (COM/2018/10 final), the Commission, with the assistance of networks of practitioners, the European Network of Ombudsmen and Member State experts, published in different language versions a Vade Mecum on complaint-handling and citizen engagement ([Environmental compliance assurance vade mecum - Publications Office of the EU (europa.eu)](https://op.europa.eu/en/publication-detail/-/publication/1fc175c2-8051-11ea-b94a-01aa75ed71a1)) together with a summary guide on the same topic ([Environmental compliance assurance vade mecum - Publications Office of the EU (europa.eu)](https://op.europa.eu/en/publication-detail/-/publication/1fc175c2-8051-11ea-b94a-01aa75ed71a1)). These documents describe good practices in the handling of citizen complaints, including with regard to environmental nuisances.
* Furthermore, in the EU Strategy on Victims’ Rights (2020-2025), the Commission acknowledges that environmental crime affects all of society, but that it may have particularly detrimental effect on individuals. It may impact personal health, livelihoods and lower property value. Victims of environmental crime may be particularly susceptible to secondary victimisation, intimidation and retaliation - notably if environmental crime is a form of organised crime. Such victims should have access to specialist support and protection. The Commission is assessing the access to justice for victims of environmental crime, including victims’ access to support and protection on the basis of the Victims’ Rights Directive, 2010/29 EU, and if necessary may take additional measures. Finally, the Commission is preparing a legislative proposal on Sustainable Corporate Governance and in this context is looking into the option of a horizontal corporate due diligence duty for adverse human rights and environmental impacts in the company’s own operations and value chains. One of the objectives of this initiative, which draws on the UN Guiding Principles on Businesses and Human Rights and on the OECD (Organisation for Economic Co-operation and Development) Guidelines for Multinational Enterprises, is to enable companies to contribute to the transition towards a sustainable economy by reducing their adverse negative impacts in line with EU goals.

***Environmental Crime Directive and the enforcement chain***

In terms of a possible legislative revision of the Environmental Crime Directive (ECD), **paragraph 11** calls for its update. **Paragraph 29** calls for full use to be made of Article 83(2) TFEU and for an evaluation of the use of Article 83(1). In terms of possible non-legislative measures focused specifically on the ECD, **paragraph 12** calls for a Commission study on the relevance of ecocide. **Paragraph 13** calls for guidance on key legal terms in the ECD. **Paragraph 52** calls on the Commission to enforce the application of sanctions established under the ECD.

In response to **paragraph 11**, the Commission draws attention to the inclusion of the revision of the ECD in the Commission work programme for 2021. The Commission has already published an [inception impact assessment](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12779-Improving-environmental-protection-through-criminal-law) and preparation of the full impact assessment is now advanced. With regard to **paragraph 29,** it is envisaged that the legal basis for a proposed revision will be Article 83(2), TFEU. With regard to **paragraph 12,** the Commission has no current plans to carry out a study on ecocide. It has, however, contacts with the European Law Institute, which is undertaking an academic project on the subject: [https://www.europeanlawinstitute.eu/projects-publications/current-projects-upcoming-projects-
and-other-activities/upcoming-projects/ecocide/](https://www.europeanlawinstitute.eu/projects-publications/current-projects-upcoming-projects-and-other-activities/upcoming-projects/ecocide/). The Commission will take note of the results of this work as well as of any legal research on the ecocide concept carried out at the international level. The Commission does not exclude the possibility of guidance of the sort mentioned in **paragraph 13**, but considers that it is premature to start relevant work before the proposal for the ECD revision is presented and before the outcome of the ECD revision is clear. As for **paragraph 52**, the Commission during its revision of the ECD is assessing ways to introduce a broader and more precise range of sanctions types and levels that must be available for environmental crime in the Member States to come to more appropriate sanctions in practice. The EU has no competence to enforce particular sanction levels to be imposed in the individual case.

The Commission is conscious that the effectiveness of the ECD is dependent on the effectiveness of the ‘enforcement chain’, i.e. the work of environmental inspectorates and law enforcement agencies in detecting, gathering evidence on and preparing dossiers on crimes and infringements; the work of environmental prosecutors in preparing cases for trial; and the work of courts in adjudicating on cases that come to trial. Measures to strengthen the ‘enforcement chain’ will also be considered in the context of the revision of the ECD.

In terms of related legislative action, **paragraph 33** calls on the Commission to explore extending the mandate of the European Public Prosecutors Office (EPPO). **Paragraph 54** calls on the Commission to come forward with a proposal for environmental inspections at EU level. **Paragraph 56** suggests that a 2001 recommendation on environmental inspections should be updated if necessary and made binding. In terms of related non-legislative action, **paragraph 34** calls on the Commission, to provide further support and a more effective and institutionalised structure for existing networks of practitioners, i.e. inspectors, police units, prosecutors and judges. **Paragraph 55** calls on the Commission to promote action by the EU, its Member States and the international community to step up efforts against environmental crime; calls on the Commission and the Member States to raise awareness and promote solutions in international forums.

All these paragraphs of the resolution are relevant to the enforcement chain mentioned above and the Commission welcomes the Parliament’s focus on the matters raised:

* With regard to **paragraph 33,** the European Public Prosecutor’s Office took up its investigative and prosecutorial tasks on 1 June 2021. The Commission is ready to assess the possibility, in accordance with Article 86(4) of the Treaty on the Functioning of the European Union, of including cross-border environmental crimes within the EPPO's competence in the medium term.
* With regard to **paragraph 54,** the Commission has no current plans to make a general proposal on environmental inspections at EU level. Under its *Chemicals Strategy for Sustainability, Towards a Toxic-Free Environment*, however, the Commission will propose to entrust the Commission with the duty to carry out audits in Member States, where relevant, to ensure compliance and enforcement of chemicals legislation, in particular REACH (COM(2020) 667 final).
* The Commission also draws attention to the role of European Anti-Fraud Office (OLAF) in which it is assisting the Member States in dealing with ongoing cases in different environmental domains and also notes that a more enhanced investigative role for OLAF in some such matters is currently being explored.
* With regard to **paragraph 56,** the recommended approach to inspections at national level set out in the 2001 Recommendation is now enshrined in binding inspections provisions in a number of EU environment laws, notably the Industrial Emissions Directive, 2010/75/EC, and the Waste Shipments Regulation, 1013/2006. It is true that these are sectoral instruments and that there is still no generally binding EU legislation on environmental inspections at national level. The Commission would nevertheless draw attention to a number of relevant developments. First, in 2018, the Commission adopted an action plan to support environmental compliance assurance (COM/2018/10 final). ‘Environmental compliance assurance’ covers the full range of interventions used by national authorities to ensure that companies and others comply with EU-derived environmental rules. While including classic environmental inspections, the concept also brings in other forms of compliance monitoring such as criminal investigations, and, in addition, it covers the following: the promotion of compliance and prevention of non-compliance (use of financial security being an example); and the deployment of a range of enforcement and liability tools under administrative, criminal and civil law. The Commission considers that, compared to inspections, the broader concept better corresponds to the range of challenges faced - and the activities undertaken - by practitioners along the enforcement chain.

Second, working with practitioners, the Commission has already prepared several compliance-assurance guidance documents, including a wide-ranging Guidance on combatting environmental crimes and related infringements, which was approved in June 2021. Third, looking ahead, in its May 2021 Action Plan ‘*Towards Zero Pollution for Air, Water and Soil*’ (COM(2021)400 final) at section 3.1, the Commission confirms that it will, amongst other things, consider developing standardised provisions on compliance assurance for new legislative proposals and monitor the proportionate and dissuasive application of penalty clauses in force; and encourage the application, across the Member States, of existing inspections and other compliance checks and penalty clauses and assess possibilities to improve them, where relevant.

* With regard to **paragraph 34,** the Commission shares the Parliament’s view on the importance of support for networks of practitioners. It draws attention to several forms of support that have already been established. First, in 2018, along with the action plan on environmental compliance assurance already mentioned, the Commission established a new high-level expert group, the Environmental Compliance and Governance Forum (mentioned at **paragraph 3** of the resolution) with a membership that includes the chairs of IMPEL (the network of inspectorates), EnviCrimeNet (the network of police and other enforcement units), ENPE (the network of prosecutors) and EUJFE (the network of judges), along with top administrators from the Member States (C(2018)10 final). The Forum allows the networks to share their concerns and help steer Commission actions in this domain – for example, preparation of the guidance documents already mentioned above. Second, the networks can draw on support from EU-level bodies such as OLAF, CEPOL (EU Agency for Law Enforcement Training), EUROPOL (EU law enforcement agency) and EUROJUST (EU Agency for Criminal Justice Cooperation). Third, the networks have benefited from EU financial support, both the LIFE Regulation and the Internal Security Fund-Police being important in this respect. Amongst other things, financial support can help the networks to maintain secretariats and organise meetings, exchanges and events, implement project-related work, enhance capacities and training, and generally ensure the consistency and sustainability of their activities.
* The Commission fully shares the importance of the international dimension mentioned in **paragraph 55,** not only when it comes to specific kinds of environmental crime such as waste and wildlife trafficking but also when it comes to globally important issues such as preventing dangerous climate change and the loss of biodiversity. The above-mentioned Guidance on combatting environmental crime and related infringements describes in its Chapter 9 the European and international dimensions of coordination and cooperation. The limits of EU competence need to be borne in mind, however. For example, the EU is not a party to several important international frameworks such as The United Nations Convention against Transnational Organised Crime ('UNTOC') and the Rome Statute governing the International Criminal Court.

***Company reporting, due diligence, voluntary approaches, trade and other matters***

**Paragraph 23** calls on the Commission to put emphasis on the enforcement of certain reporting requirements in the upcoming revision of the Non-Financial Reporting Directive (NFRD). **Paragraph 39** welcomes a Commission announcement with regard to a proposal on corporate due diligence and corporate accountability. **Paragraph 48** recalls the importance of preventing environmental damage in third countries caused by EU companies and encourages the Commission to establish incentives for companies whose sustainability policies voluntarily go beyond environmental and biodiversity standards laid down in law for the purposes of evaluating these policies, distilling best practices, and providing this as an example for other companies to follow. **Paragraphs 49 and 50** calls for strengthened Commission enforcement of environmental provisions under trade agreements. **Paragraph 53** calls on the Commission to ensure that corporate social responsibility in preventing and remedying environmental harm is taken into account in procurement contracts and the allocation of public funds. **Paragraph 58** suggests the removal from the transparency register of companies convicted for environmental crimes.

With regard to **paragraph 23,** on 21 April 2021, the Commission adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD), which would revise and strengthen the provisions of the Non-Financial Reporting Directive (NFRD). The Commission’s CSRD proposal extends the scope of the reporting requirements to approximately 50.000 companies compared to about 11.000 under the NFRD. The new requirements would apply to all large and listed companies, whereas the NFRD applies only to large public interest entities with more than 500 employees. In addition, the proposal ensures that Member States would apply a minimum set of sanctions for non-compliance with the reporting requirements.

With regard to **paragraphs 39 and 48,** the Commission has provided comments on due diligence in response to a separate European Parliament resolution (2020/2129 (INL)).

Through the European Circular Economy Stakeholders Platform ([ECESP Leadership Group on economic incentive policies: reflections Summer 2020 European Circular Economy Stakeholder Platform (europa.eu)](https://circulareconomy.europa.eu/platform/en/about/cg-activities-documents/ecesp-leadership-group-economic-incentive-policies-reflections-summer-2020)), the Commission is actively promoting a debate among stakeholders (i.e. companies, NGOs (non-governmental organisation), regions, cities, Member States, citizens) on the incentives mentioned in **paragraph 48**. Topics include circular public procurement, extended producer responsibility, tax shifting and CO2 pricing.There are also existing EU legal frameworks in place to encourage company ‘front runners’ to demonstrate their green credentials. Such companies can register under the EMAS scheme, i.e. the EU’s eco-management and audit scheme, to evaluate, report, and improve their environmental performance. EMAS is open to every type of organisation eager to improve its environmental performance. Two EU funded projects focus on regulatory relief and other incentives for EMAS-registered organisations (<http://www.lifebraver.eu/> and [https://www.interreg
europe.eu/enhance/](https://www.interregeurope.eu/enhance/)). They consist mainly of tax relief, reduction in fees, reduction in controls and integration of EMAS in green public procurement in certain Member States or regions. Frontrunners can also use the EU Ecolabel, the EU voluntary label for environmental excellence, for their products. This directs consumers to the best-performing goods and services on the market. The number of EU Ecolabel products on the market – now more than 78000 - have doubled in the last five years**.** Companies developing innovative environmental technologies can also get a third-party assessment of the performance reached by their technologies, based on independent tests, through the [Environmental Technology Verification](https://ec.europa.eu/environment/ecoap/etv_en) (ETV) scheme. This will help them differentiate their technologies and gain more credibility on the EU or international markets.The European Commission is also working on a legislative initiative on sustainable product policy that may consider rewarding products based on their different sustainability performance, including by linking high performance levels to incentives.

With regard to **paragraphs 49 and 50**, support for the Green Deal is a central pillar of trade policy and the Commission intends to enhance trade’s contribution to the Green Deal objective accordingly. The preservation of biodiversity is a global challenge that requires global efforts and the Commission will use free trade agreements (FTAs) as platforms to engage with the EU’s trade partners. The Trade Policy Review reinforces the focus of this Commission on effective enforcement and implementation. The appointment of the Chief Trade Enforcement Officer (CTEO) in 2020 highlighted this commitment. On the importance of systematically including a biodiversity dimension to all sustainability impact assessments (SIAs), the Commission is already assessing the impact of all trade agreements on biodiversity and is improving its methodology. Implementation of the new methodology that was published on 19 May 2021 will be important in both ex-ante SIAs and ex-post evaluations. Outcomes should indeed feed into FTA negotiation process. EU trade agreements include non-regression provisions aimed at preventing parties from weakening their environmental (and labour) protections in order to encourage trade or investment, and thus promote a level-playing field. These provisions are subject to a dedicated dispute settlement that covers Trade and Sustainable Development (TSD) chapters. The Commission have strengthened the implementation and enforcement of TSD provisions in EU trade agreements, including with adoption of the TSD 15-points Action Plan, the establishment of the CTEO and Single Entry Point. The 2021 TSD review considers together with stakeholders further actions ensuring on effective implementation and enforcement of TSD provisions.

With regard to **paragraph 53,** introducing specific sustainability and transparency requirements and criteria in public procurement can strongly support and incentivise responsible business behaviour. The Commission actively promotes the uptake of environmental and social criteria in public procurement across the EU, mainly by providing guidance and support tools to public buyers. The Commission develops and updates regularly [sectoral green public procurement (GPP) criteria](https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm), and has issued [guidance](https://ec.europa.eu/environment/gpp/buying_handbook_en.htm) and a [training toolkit on GPP](https://ec.europa.eu/environment/gpp/toolkit_en.htm). Furthermore, under the Circular Economy Action Plan, it committed to introduce mandatory GPP requirements in sectoral legislation. The proposal for the [new Batteries Regulation](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12399-Batteries-modernising-EU-rules_en) is the first among these initiatives to be published.

With regard to **paragraph 58,** the Commission notes that, on 15 December 2020, the European Parliament, the Council and the Commission reached a political agreement concerning the new Interinstitutional Agreement (IIA) establishing the mandatory Transparency Register, covering all three institutions. The new IIA, which was signed on 20 May 2021, provides for a review of its provisions no later than four years after its entry into force.