

## EU environmental regulation for a circular economy in the light of national sovereignty<sup>2</sup>

### Abstract

*This paper aims to explore the impact of the latest European Union (EU) circular economy initiatives on the national sovereignty of EU Member States, specifically examining whether new EU measures encouraging a circular economy limit the domain of Member States' sovereignty. Accordingly, the paper begins with the assessment of the measures laid out in the second Circular Economy Action Plan (CEAP) adopted in 2020. It analyses the effectiveness and impact of these measures in promoting a circular economy in the EU (Chapter 2). Following this, it reviews the progress made on implementing the actions listed in the CEAP, with a special focus on legislative and non-legislative measures. It highlights the achievements in the implementation process and provides a brief overview of key legislative proposals (Chapter 3). The following section explores how different countries in the EU are developing their own strategies to promote a circular economy (Chapter 4). Lastly, the paper delves into the notion of sovereignty within the EU and the relationship between the EU and its Member States. It analyses how Member States balance their national sovereignty in relation to the EU and investigates the types of instruments and legal basis used for regulating a circular economy (Chapter 5). The final section concludes, noting the current minor impact of the EU's environmental regulation for a circular economy on national sovereignty (Chapter 6).*

**Keywords:** EU Circular Economy Action Plan (CEAP), National Circular Economy Strategies, National Sovereignty, National Identity, Environmental Regulation

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## 1. Introduction

This paper explores two intricate concepts that have been extensively examined in scientific research – circular economy and national sovereignty. The question of national sovereignty in the European Union (EU) tends to resurface during times of economic, financial, or other crises.<sup>3</sup> The series of crises and conflicts over sovereignty often threaten to halt the process of European integration. Among the most prominent examples where sovereignty conflicts in the EU have emerged are the economic crisis and new macroeconomics and fiscal governances, the crises of migrants and asylum seekers, Brexit, and the conflicts with the rule of law.<sup>4</sup> However, the current climate crisis, as well as natural resource depletion and animal species extinction, are prompting states to collaborate to find effective solutions to address these challenges.<sup>5</sup> In this context, the concept of a circular economy appears as a sustainable system wherein materials are continually reused and regenerated, ensuring that nothing goes to waste.<sup>6</sup> Products and materials are kept in circulation through practices such as maintenance, reuse, refurbishment, remanufacture, recycling, and composting. The circular economy addresses issues such as climate change, biodiversity loss, waste, and pollution by separating economic growth from the use of limited resources.<sup>7</sup> The circular economy concept does not have a specific origin attributed to a single individual or date, but rather, it has evolved from various schools of thought over time.<sup>8</sup>

The EU has been actively implementing measures in the circular economy framework since 2014, with certain aspects appearing in EU regulations as far back as the 1970s.<sup>9</sup> The first EU action plan for the circular economy was adopted in 2015.<sup>10</sup> A circular economy was defined as one “*where the value of products, materials and resources is maintained in the economy for as long as possible, and the generation of waste minimised*”.<sup>11</sup> The European Commission adopted the new Circular Economy Action Plan (CEAP) ‘for a cleaner and more competitive Europe’ in March 2020.<sup>12</sup>

3 | Bifulco & Nato 2024

4 | Ibid. 37.

5 | Ibid. 16. For more information on the protection of future generations see, Szilágyi 2022; Szilágyi 2021 and Krajnyák 2023.

6 | Ellen MacArthur Foundation 2024

7 | Ellen MacArthur Foundation 2024

8 | Wautelet 2018, Mazur-Wierzbicka 2021

9 | Mazur-Wierzbicka 2021, 2.

10 | Communication from the Commission to the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Closing the loop – An EU action plan for the Circular Economy, COM/2015/0614 final.

11 | Ibid. 2.

12 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan for a cleaner and more competitive Europe, COM/2020/98 final.

This paper aims to explore the impact of the newest EU circular economy initiatives on the national sovereignty of EU Member States, specifically examining whether new EU measures encouraging a circular economy limit the domain of Member States' sovereignty. In view of this aim, the present paper begins with the assessment of the measures laid out in the new CEAP. It evaluates how successful and influential these measures are in advancing a circular economy in the EU (Chapter 2). It continues with an update on the progress of implementing the actions listed in the CEAP, with a special focus on legislative and non-legislative measures (Chapter 3). The following section examines the various approaches taken by different EU countries to promote a circular economy (Chapter 4). Finally, the paper explores the concept of sovereignty within the EU and the relationship between the EU and its Member States. It examines how Member States manage their national sovereignty in regards to the EU and explores the types of instruments and legal basis used for regulating a circular economy (Chapter 5). The final section of the paper gives a conclusion on the minor impact of the current EU's regulation for a circular economy on national sovereignty (Chapter 6).

## **2. Assessing the measures of the new Circular Economy Action Plan**

The new EU's CEAP aims to expand the circular economy to the mainstream economic actors to achieve climate neutrality by 2050 and separate economic growth from the use of resources, as foreseen in the European Green Plan.<sup>13</sup> To fulfil this objective, the EU has highlighted four objectives: (1) to accelerate the transition towards a regenerative growth model that gives back to the planet more than it takes; (2) to advance towards keeping its resource consumption within planetary boundaries; (3) to strive to reduce its consumption footprint, and (4) to double its circular material use rate in the coming decade.<sup>14</sup>

The new CEAP builds upon previous initiatives and policies related to the circular economy that have been implemented since the adoption of the first EU action plan for the circular economy in 2015. The new CEAP does not contain the definition of a circular economy, but instead, it implicitly follows it from the previous action plan.<sup>15</sup> In the annex to its new plan, the Commission announced key actions, which include legislative initiatives that it intended to implement from 2020 to 2023. In comparison to the 2015 action plan, the new plan contains a higher

13 | Ibid. 2.

14 | Ibid.

15 | Krämer 2020, 278.

number of legislative measures.<sup>16</sup> The anticipated proposals or amendments to the legislation consist of the following key actions: (a) legislative proposal for a sustainable product policy initiative; (b) legislative proposal empowering consumers in the green transition; (c) legislative measures establishing a new ‘right to repair’; (d) legislative proposal on substantiating green claims; (e) review of the industrial emissions directive, including the integration of circular economy practices in upcoming best available techniques reference documents; (f) introduction of the Circular Electronics Initiative and common charger solution; (g) review of the Directive on the Restriction of the use of Certain Hazardous Substances in Electrical and Electronic Equipment; (h) proposal for a new regulatory framework for batteries; (i) review of the rules on end-of-life vehicles; (j) review of the rules on proper treatment of waste oils; (k) review to reinforce the essential requirements for packaging and reduce (over)packaging and packaging waste; (l) mandatory requirements on recycled plastic content and plastic waste reduction measures for key products such as packaging, construction materials and vehicles; (m) restriction of intentionally added microplastics and measures on unintentional release of microplastics; (n) initiative to substitute single-use packaging, tableware and cutlery with reusable products in food services; (o) waste reduction targets for specific streams and other measures for waste prevention; (p) EU-wide harmonised model for separate collection of waste; (q) revision of the rules on waste shipments, and (r) regulatory framework for the certification of carbon removals.<sup>17</sup>

As Nogueira explains, these key actions fall in the category of regulatory measures, that is, public command and control instruments that include the following: prohibitions; limits (emission limit values, standards, product or process standards) and impact assessments; permits, previous communications, and responsible statements; and inspections and penalties (fines, withdrawal of permits or rights).<sup>18</sup> Nogueira classified the remaining CEAP measures into the following categories: non-regulatory strategies and policies, market-based tools, information measures, and self-regulative instruments.<sup>19</sup>

The second category of non-regulatory (voluntary) EU strategies and policies include: (a) policy framework for bio-based, biodegradable, or compostable plastics; (b) EU Strategy for Textiles; (c) strategy for a Sustainable Built Environment; (d) leading efforts towards a global agreement on plastics, and (e) proposing a Global Circular Economy Alliance and initiating discussions on an international agreement on the management of natural resources.<sup>20</sup>

16 | The previous plan included a total of 54 actions. However, most of these actions, specifically 47, were focused on non-legislative measures, and the main focus of legislative proposals revolved around amending the waste legislation; *ibid.*, 81.

17 | COM/2020/98 final (fn. 10), Annex. See also Nogueira 2023, 1551.

18 | *Ibid.*

19 | *Ibid.* 1551–1552.

20 | *Ibid.* 1551.

Market-based tools constitute the third category of EU measures and consist of both mandatory and voluntary instruments. Within this type of instruments Nogueira lists: (a) mandatory Green Public Procurement (GPP) criteria and targets in sectoral legislation and phasing-in mandatory reporting on GPP; (b) supporting the circular economy transition through the Skills Agenda, the forthcoming Action Plan for Social Economy, the Pact for Skills and the European Social Fund Plus; (c) supporting the circular economy transition through Cohesion policy funds, the Just Transition Mechanism and urban initiatives; (d) reflecting circular economy objectives in the revision of the guidelines on state aid in the field of environment and energy; (e) mainstreaming circular economy objectives in the context of the rules on non-financial reporting, and initiatives on sustainable corporate governance and on environmental accounting; (f) mainstreaming circular economy objectives in free trade agreements, in other bilateral, regional and multilateral processes and agreements, and in EU external policy funding instruments, and (g) reward systems to return old devices.<sup>21</sup>

As Nogueira indicates, information measures, which could be mandatory or voluntary, comprise reports, studies, indicators, platforms, as well as information about product or service specifications, rankings, guides, recommendations, good practices, and labels. This category contains the following EU measures: (a) updating the Circular Economy Monitoring Framework to reflect new policy priorities and develop further indicators on resource use, including consumption and material footprints; (b) non-legislative measures establishing a new 'right to repair'; (c) guidance to clarify how the Directive on the Restriction of the use of Certain Hazardous Substances in Electrical and Electronic Equipment links with REACH and Ecodesign requirements; (d) labelling to facilitate separate waste collection; (e) methodologies to track and minimise the presence of substances of concern in recycled materials and articles made thereof; (f) harmonised information systems for the presence of substances of concern; (g) scoping the development of further EU-wide end-of-waste and by-product criteria, and (h) improving measurement, modelling, and policy tools to capture synergies between the circular economy and climate change mitigation and adaptation at the EU and national level.<sup>22</sup>

The last category refers to self-regulatory (voluntary) instruments (technical standardisation, certification, and environmental audits). This final category includes one CEAP measure, that is, the launch of an industry-led industrial symbiosis reporting and certification system.<sup>23</sup>

In a comprehensive critical assessment of the proposed EU measures, Nogueira highlights numerous problematic points of the new CEAP that have implications

21 | *Ibid.* 1552.

22 | *Ibid.*

23 | *Ibid.*

for its ability to achieve a systemic and transformative transition to the circular economy in the EU. There is currently no initiative for a 'Framework Directive' on the circular economy that would bring all sectoral measures into alignment, and CEAP, as an action plan, is not legally binding.<sup>24</sup>

Although legislative measures have increased, their categorisation still indicates a transition away from public law interventions towards softer and voluntary measures, including purely informative measures (e.g., indicators, information platforms, and guidelines).<sup>25</sup> Whether the chosen instruments are appropriate to transform the economy from a linear to a circular one is questionable. As an example, the initial CEAP proposed voluntary measures for green public procurement, whereas the new CEAP recognises the drawbacks of this approach and envisions compulsory circularity requirements for public procurement.<sup>26</sup> In addition, Nogueira observes that there is a significant imbalance in the extent of measures proposed in the plan,<sup>27</sup> and some of them will need to be developed as separate strategies or policies (e.g., EU strategy for textiles and Policy Framework for bio-based plastics and biodegradable or compostable plastics). However, some of the measures are vaguely defined, making it difficult to determine how the outcome will be evaluated or measured.<sup>28</sup>

Regarding the question of how transformative the proposed measures are, Krämer observes that the new CEAP seeks to take a more active role in regulating products, potentially leading to significant changes.<sup>29</sup> In the past, producers maintained discretion over deciding and implementing measures related to their products. Until now, the regulation aimed at producers mainly referred to their voluntary participation.<sup>30</sup> As Krämer explains, previously, EU legislation focused on limiting the use of dangerous or unwanted substances in various products such as cars, electrical devices, batteries, pesticides, and chemicals. However, the regulation did not extend to controlling the composition of the products. Therefore, it would be a significant advancement if the EU were to mandate the inclusion of a minimum content requirement for producers and potentially, importers as well, focusing on plastic material.<sup>31</sup> Krämer concludes that achieving consensus among all 27 Member States is not self-evident.<sup>32</sup> Moreover, he suggests that the concept of a circular economy may not be suitable or sufficiently effective to serve

24 | *Ibi.* 1552–1553.

25 | *Ibid.* 1554 and 1559.

26 | *Ibid.* 1553.

27 | *Ibid.*

28 | *Ibid.*

29 | Krämer 2020, 280.

30 | E.g. Regulation (EC) No 66/2010 on the EU Ecolabel and Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

31 | Krämer 2020, 281.

32 | *Ibid.*

as the foundation for the overall product policy and growth strategy of the EU.<sup>33</sup> As an example, he points out that despite having legislation on circular economy since 1994,<sup>34</sup> it cannot be assumed that products in Germany are inherently more durable, repairable, or recyclable.<sup>35</sup>

A recent report by Watkins, Van der Ven, and Bondi noted the EU's approach to transitioning into a circular economy lacks a direct emphasis on reducing the use of material resources by addressing consumption patterns.<sup>36</sup> In other words, the EU's strategy does not adequately prioritise actions aimed at reducing material resource consumption. In addition, a 2023 report by the European Court of Auditors has determined that the EU's transition towards a circular economy is progressing slowly. The report notes that achieving the goal of doubling the circularity rate by 2030 appears to be highly challenging.<sup>37</sup>

Most of the CEAP's measures primarily focus on mitigating the adverse effects of the existing linear economy by enhancing product design, promoting resource efficiency through repair and re-use, and improving the management of products at the end of their life cycle. The key actions and legislative proposals, however, do not specifically address the top level of the waste hierarchy, which aims to reduce the need for products or resources through improved system design.<sup>38</sup> A related shortcoming pertains to the lack of enforceable regulations and specific objectives aimed at minimising material resource consumption. Existing frameworks primarily concentrate on end-of-life measures rather than actively reducing the consumption of resources.<sup>39</sup>

To achieve the ambitious objectives of the new CEAP, Watkins, Van der Ven, and Bondi argue that it is necessary to directly tackle resource consumption through the development of an EU Material Resources Law.<sup>40</sup> This would empower the EU to directly confront the escalating use of natural resources, which lies at the core of some of the most pressing environmental challenges, including climate change, biodiversity loss, and pollution.<sup>41</sup>

33 | Ibid. 282.

34 | Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen, 27. September 1994 (BGBl. I S. 2705). Latest legislation updates from 24 February 2012 (BGBl. I S. 212).

35 | Krämer 2020, 282.

36 | Watkins, Van der Ven & Bondi 2023

37 | European Court of Auditors, Circular economy: Slow transition by Member States despite EU action, Special Report.

38 | Watkins, Van der Ven & Bondi 2023, 6.

39 | Ibid. 7.

40 | For more information on EU raw materials policy see, Ledwoń 2023

41 | Watkins, Van der Ven & Bondi 2023, 2.

### 3. Progress of the implementation of the CEAP

The European Commission regularly updates information regarding the implementation of the actions listed in the CEAP, with a special focus on legislative and non-legislative measures.<sup>42</sup>

#### 3.1. Progress on legislative measures

The first initiative that was delivered under the CEAP was the adoption of the proposal for a new regulation on sustainable batteries in December 2020. The European Parliament and the Council adopted the new Batteries Regulation on 12 July 2023, repealing the Batteries Directive.<sup>43</sup> One could argue that regulations are more suitable for manufacturers as opposed to directives because they guarantee consistent standards across all EU Member States, making it easier to navigate through different national laws and, thus, creating a fairer market. Certain provisions came into effect starting 18 February 2024, while others will gradually become applicable in the upcoming years, with specific dates corresponding to different types of batteries. The outcome of voting on this legislative act was 25 Member States in favour, while only two (Bulgaria and Slovenia) abstained.<sup>44</sup>

Furthermore, in the category of legislative measures listed in the CEAP, the Commission adopted a proposal to update rules on persistent organic pollutants in waste in October 2021. The Regulation, amending Annexes IV and V to Regulation (EU) 2019/1021 on persistent organic pollutants, was adopted by the European Parliament and the Council on 23 November 2022.<sup>45</sup> Hungary was the only Member State that voted against the proposed legislative act.<sup>46</sup>

Regarding circular economy measures that are currently ongoing in the ordinary legislative procedure, the Commission adopted the following proposals: (a) New rules on waste shipments;<sup>47</sup> (b) Sustainable Products Initiative,<sup>48</sup> including

42 | European Commission, Circular Economy Action Plan.

43 | Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC, OJ L 191, 28.7.2023.

44 | Council of the European Union, Voting result, Document ST 117012023 INIT, 10 July 2023.

45 | Regulation (EU) 2022/2400 of the European Parliament and of the Council of 23 November 2022 amending Annexes IV and V to Regulation (EU) 2019/1021 on persistent organic pollutants, OJ L 317, 9.12.2022.

46 | Council of the European Union, Voting result, Document ST 140272022 INIT, 24 October 2022.

47 | Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056, COM/2021/709 final.

48 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, On making sustainable products the norm, COM/2022/140 final.



the proposal for the Ecodesign for Sustainable Products Regulation;<sup>49</sup> (c) Revision of the Construction Products Regulation;<sup>50</sup> (d) Proposal to amend the Unfair Commercial Practices Directive and the Consumer Rights Directive to empower consumers for the green transition;<sup>51</sup> (e) Proposals to revise the Industrial Emissions Directive<sup>52</sup> and the European Pollutant Release and Transfer Register (E-PRTR),<sup>53</sup> (f) Revision of the Packaging and Packaging Waste Directive<sup>54</sup> (g) Proposal for a Directive on green claims;<sup>55</sup> (h) Proposal for a Directive on common rules promoting the repair of goods;<sup>56</sup> (i) Adoption of measures that restrict microplastics intentionally added to products under the EU chemical legislation REACH,<sup>57</sup> and (j) Proposal for a Regulation on preventing pellet losses to reduce microplastic pollution.<sup>58</sup>

Each of these legislative measures can be examined individually. Thus, the following analysis only focuses on providing a concise summary of the key legislative proposals to the extent necessary to consider their impact on the national sovereignty of Member States.

49 | Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC, COM/2022/142 final.

50 | Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011, COM/2022/144 final.

51 | Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, COM/2022/143 final.

52 | Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, COM/2022/156 final/3.

53 | Proposal for a Regulation of the European Parliament and of the Council on reporting of environmental data from industrial installations and establishing an Industrial Emissions Portal, COM/2022/157 final.

54 | Proposal for a Regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC, COM/2022/677 final.

55 | Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive), COM/2023/166 final.

56 | Proposal for a Directive of the European Parliament and of the Council on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828, COM/2023/155 final.

57 | Commission Regulation (EU) 2023/2055 of 25 September 2023 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards synthetic polymer microparticles, OJ L 238, 27.9.2023.

58 | Proposal for a Regulation of the European Parliament and of the Council on preventing plastic pellet losses to reduce microplastic pollution, COM/2023/645 final.

The proposal of the new Waste Shipment Regulation has three primary objectives: preventing the export of waste problems from the EU to third countries, simplifying the transportation of waste for recycling and reuse within the EU, and enhancing the measures to combat illegal waste shipments.<sup>59</sup>

The proposed Ecodesign for Sustainable Products Regulation will replace the current Ecodesign Directive 2009/125/EC, which only covers energy-related products. The proposal aims to establish ecodesign criteria for certain product categories, with the objective of significantly enhancing their circularity, energy efficiency, and other environmental sustainability aspects. Except for certain exclusions like food and feed defined in Regulation 178/2002, this measure will establish the requirements for performance and information standards for nearly all types of physical products sold in the EU market. The framework will enable the establishment of a diverse set of requirements, encompassing various aspects such as product durability, reusability, upgradability, and reparability; presence of substances that inhibit circularity; energy and resource efficiency; recycled content; remanufacturing and recycling; carbon and environmental footprints; and information requirements, including a Digital Product Passport.<sup>60</sup>

The objectives of the revision of the Construction Products Regulation are to enhance the functioning of the internal market for construction products, tackle the existing obstacles in national implementation (especially related to market supervision), streamline the legal framework, and facilitate the shift towards green transition in the industry.<sup>61</sup>

The proposed revisions in EU consumer law aim to facilitate the transition towards climate and environmental goals outlined in the European Green Deal by promoting changes in consumer behaviour, that is, enhancing consumer awareness regarding the longevity and reparability of products through improved information provision. Furthermore, the goal is to safeguard consumers against commercial practices that hinder sustainable purchases.<sup>62</sup> However, as Pantzar and Suljada explain, the effectiveness of providing enhanced information on products in influencing actual changes in purchasing behaviour is unproven.<sup>63</sup> The main drives for consumers are price–quality ratio and convenience.<sup>64</sup> Additionally, they question whether citizens should be solely responsible for the transformative

59 | European Commission, Press release, European Green Deal: Commission adopts new proposals, 17 November 2021

60 | For more information see, European Commission, Ecodesign for Sustainable Products Regulation

61 | European Commission 2022

62 | European Commission, Factsheet Empowering Consumers for the Green Transition, 30 March 2022

63 | Pantzar & Suljada 2020, 13.

64 | European Commission, Consumers, Health, Agriculture and Food Executive Agency, Cerulli-Harms, Porsch, Suter et al. 2018, 3.

change as consumers, especially when both market forces and societal influences continue to promote material consumption.<sup>65</sup>

The revision of the Industrial Emissions Directive aims to enhance the regulation of pollution generated by large industrial installations, foster industrial activities that minimise their adverse environmental effects, and ensure their full alignment with the EU's environment, climate, energy, and circular economy policies.<sup>66</sup> The purpose of the proposed Regulation on reporting of environmental data from industrial installations is to transform the European Pollutant Release and Transfer Register (E-PRTR) into an Industrial Emissions Portal.<sup>67</sup>

The key measures included in the proposal of a Regulation on packaging and packaging waste repealing are: targets to reduce packaging waste, reuse targets for economic operators for specific packaging categories, limiting over-packaging and unnecessary forms of packaging, promoting the use of reusable containers and refill systems, minimum required levels of recycled content that must be included in plastic packaging, compulsory deposit return systems for plastic bottles and aluminium cans, and standardised labelling on packaging and waste bins that promotes accurate consumer disposal of packaging waste.<sup>68</sup>

The proposal on green claims aims to protect consumers from the greenwashing practice of providing incorrect or deceptive information to make consumers believe that products are more environmentally sustainable than is, in fact, the case. The proposal stipulates how companies should provide evidence to substantiate their green claims by complying with a number of requirements. Independent and accredited verifiers would assess and validate these claims. The proposal also aims to establish rules on environmental labelling schemes, which are not regulated by any other EU acts.<sup>69</sup>

The objective of the proposed Directive on common rules promoting the repair of goods is to reduce current trends in business and consumption, characterised by frequent and premature disposal and replacement of goods. The proposed directive aims to modify the current remedy systems for addressing issues with defective products, both within and outside the guarantee period. Additionally, it would progressively expand the scope of products covered by these changes. The proposed directive aims to prioritise repair over replacement when a product becomes defective under the legal guarantee unless the expenses for repair exceed those for replacement. Member States would be required to establish at least one national platform that enables consumers to easily locate appropriate repair services.<sup>70</sup>

65 | Pantzar & Suljada 2020.

66 | European Parliament, Revision of the Industrial Emissions Directive.

67 | European Commission, Directorate-General for Environment, Industrial emissions – Modernising EU rules for the green transition.

68 | European Commission, Directorate-General for Environment, Circular economy – New rules on packaging and packaging waste.

69 | European Commission, Circular Economy, Green Claims.

70 | European Commission 2024

The amendments to Annex XVII to the REACH Regulation include a new restriction that concerns synthetic polymer microparticles. These microparticles cannot be used when they are present to confer a sought-after characteristic in mixtures in a concentration equal to or greater than 0.01% by weight. The restriction also prohibits the sale of microplastics, including products that contain intentionally added microplastics and release them during use.<sup>71</sup>

The proposed Regulation on preventing pellet losses with the goal of reducing microplastic pollution seeks to ensure that all EU operators involved in handling pellets take precautionary measures. The priority order includes, first, taking preventive measures to avoid any accidents or spillages of pellets; second, implementing measures to contain spilt pellets to prevent environmental pollution; and third, resorting to clean-up activities after a spill or loss event as a last option. The proposal envisages best handling practices for operators, the implementation of mandatory certification and self-declarations, the establishment of a harmonised methodology to estimate losses, and the introduction of more relaxed requirements for small and medium-sized enterprises.<sup>72</sup>

The effectiveness of legislative measures currently being adopted will only be demonstrated in the future once they have been fully implemented and their impact has been assessed.

### **3.2. Progress on non-legislative measures**

In the remaining categories of non-legislative measures, the Commission implemented as follows: (a) launching of the Global Alliance on Circular Economy and Resource Efficiency (GACERE) as an initiative of the EU and United Nations Environment Programme;<sup>73</sup> (b) Communication of the EU Strategy for Sustainable and Circular Textiles;<sup>74</sup> (c) communication of the EU policy framework on bio-based, biodegradable, and compostable plastics<sup>75</sup>, and (d) revision of the Circular Economy Monitoring Framework.<sup>76</sup>

71 | European Commission 2023a

72 | European Commission 2023b

73 | Gacere 2024

74 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Strategy for Sustainable and Circular Textiles, COM/2022/141 final.

75 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU policy framework on biobased, biodegradable and compostable plastics, COM/2022/682 final.

76 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan For a cleaner and more competitive Europe, COM/2020/98 final.

## 4. National Circular Economy Strategies

Although the CEAP does not mandate EU Member States to adopt a circular economy action plan, as of 2023, 23 of them have adopted national circular economy policies.<sup>77</sup> As one report notes, the emphasis placed by EU Member States on waste management and resource efficiency generally aligns with the priorities set at the EU level and their obligations to implement the EU waste law.<sup>78</sup>

Certain EU Member States have set goals aimed at enhancing resource productivity.<sup>79</sup> For instance, France aims to achieve a 30% increase in resource productivity from 2010 to 2030, and Austria intends to accomplish a circular material use rate (circularity rate)<sup>80</sup> of 18% by 2030, based on a baseline established in 2015.<sup>81</sup> As Watkins, Van der Ven, and Bondi explain, these national objectives aim to enhance resource efficiency<sup>82</sup> instead of reducing the overall quantity of resources used in the economy.<sup>83</sup> Increasing resource efficiency does not necessarily lead to reducing overall material resource consumption. The rebound effect occurs when resources are freed up due to increased efficiency, leading to a subsequent rise in the consumption of the same product or service. This can occur due to decreased costs or the reallocation of these resources elsewhere.<sup>84</sup> The European Commission has noted that in recent years, the transition towards more circular models of production and consumption has seen a combination of positive and negative developments. The EU has made progress in achieving greater resource efficiency in its production processes. However, the level of materials consumed and waste

77 | Four Member States that have not yet adopted the national plan are Hungary, Lithuania, Slovakia, and Croatia.

78 | Watkins, Van der Ven & Bondi 2023, 13.

79 | Resource productivity describes the economic gains achieved through resource efficiency. It depicts the value obtained from a certain amount of natural resources. At the macro-economic level, EUROSTAT measures it as the ratio between economic activity – expressed by gross domestic product (GDP) – and domestic material consumption (DMC). Resource productivity is the inverse of resource intensity.

80 | The circular material use, also known as circularity rate, is defined as the ratio of the circular use of materials to the overall material use. The overall material use is measured by summing up the aggregate domestic material consumption (DMC) and the circular use of materials. The circular use of materials is approximated by the amount of waste recycled in domestic recovery plants minus imported waste destined for recovery plus exported waste destined for recovery abroad. A higher circularity rate value means that more secondary materials substitute for primary raw materials thus reducing the environmental impacts of extracting primary material.

81 | *Ibid.* 15.

82 | “In general terms, resource efficiency describes the overarching goals of decoupling – increasing human well-being and economic growth while lowering the amount of resources required and negative environmental impacts associated with resource use. In other words, this means doing better with less. In technical terms, resource efficiency means achieving higher outputs with lower inputs and can be reflected by indicators such as resource productivity (including GDP/resource consumption).”

83 | Watkins, Van der Ven & Bondi 2023, 15.

84 | *Ibid.* 7.

generated remains exceedingly high in the EU, highlighting the necessity for future reduction efforts.<sup>85</sup>

Only four countries, namely, Austria, Belgium, Finland, and the Netherlands, have specifically adopted quantitative targets to address resource consumption.<sup>86</sup> Watkins, Van der Ven, and Bondi observe that the lack of their legally binding force is the main drawback of these targets, even though they are focused on reducing material resource consumption through quantitative measures. Over the past decade, there seems to be no evident correlation between the implementation of a material resource consumption target and a decrease in per capita material footprint.<sup>87</sup>

The absence of legally binding targets at the EU Member States' level could be attributed to several factors.<sup>88</sup> As Watkins, Van der Ven, and Bondi explain, the countries may face challenges in achieving a comprehensive government-wide approach and resolving conflicting goals pursued by various ministries. This can be further complicated by a lack of technical understanding regarding material flow, data availability, and specific methodological issues related to developing the required indicators. Having ambitious resource consumption targets could put a country at a competitive disadvantage compared to other EU Member States that do not have strict requirements for resource consumption. As a solution, Watkins, Van der Ven, and Bondi propose the development of an EU Material Resources Law that sets a mandatory target for all Member States regarding their consumption of material resources. Additionally, they provide for a comprehensive examination of how this law can be developed at the EU level.<sup>89</sup> Furthermore, they demonstrate the advantages of developing and implementing an EU Material Resources Law compared to current EU policies, as well as its ability to resolve inconsistencies present in the current approaches to EU regulation.<sup>90</sup>

## 5. The Concept of Sovereignty in the EU and the Relations between the EU and its Member States

The term 'sovereignty' essentially refers to the supreme authority within a territory.<sup>91</sup> As Tiedeke explained, sovereignty was a concept that, historically, existed separately from the nation state.<sup>92</sup> It was only with the emergence of the

85 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a revised monitoring framework for the circular economy, COM/2023/306 final.

86 | Watkins, Van der Ven & Bondi 2023, 15–17.

87 | *Ibid.*, 18.

88 | *Ibid.* 19–20.

89 | *Ibid.* 20–40.

90 | *Ibid.* 40–51.

91 | Philpott 2024

92 | Tiedeke 2024

Westphalian system that state sovereignty began to evolve.<sup>93</sup> In the literature, sovereignty is often portrayed as possessing two distinct dimensions: internal and external. Internal sovereignty refers to the highest authority held within a specific territory or the ultimate power residing within that territory.<sup>94</sup> The concept of external sovereignty pertains to the positioning of a state within the realm of international relations.<sup>95</sup>

Throughout the twentieth century, alongside the United Nations' (UN) global and universal scope, sector-specific international organisations were notably expanding. The establishment of the UN, while grounded in the principle of state sovereignty, gradually undermines the concept of external sovereignty.<sup>96</sup> Over time, these international organisations, such as the World Trade Organization, will increasingly limit 'the sphere of action of state sovereignty, since they will demand from states, within their own sphere of action, functional supremacy'.<sup>97</sup> As Bifulco and Nato conclude, interpreting external sovereignty in the traditional sense, wherein a state possesses complete and independent control over all powers within its territory, will no longer be possible.<sup>98</sup> They also stress the fact that historically, the issue of states' sovereignty does not arise in periods of absence of crisis, as it is deemed unnecessary. However, sovereignty becomes relevant again during times of crisis and when established institutions and values are called into question, as it occurred during the period following the economic and financial crisis that began in 2007.<sup>99</sup>

Although the texts of the EU treaties do not explicitly mention the concept of sovereignty, the Treaty on EU (TEU) has several important articles that deal with the relations between the EU and its Member States. Article 1(1) of the TEU prescribes that by this Treaty, the Member States establish among themselves a EU, on which the Member States confer competences to attain their common objectives. According to Tiedeke, transferring competences to the EU is not a limitation on the sovereignty of Member States but rather an exercise of their sovereign rights.<sup>100</sup> As Bifulco and Nato observe, in the German literature,<sup>101</sup> sovereignty is associated with the concept known as Kompetenz-Kompetenz, where the person holding sovereign power has the authority to determine how competences are allocated between central and peripheral units.<sup>102</sup> The German Federal Constitutional

93 | Ibid. See also: Bifulco & Nato 2024, 9.

94 | Tiedeke 2024 and Bifulco & Nato 2024, 9–10.

95 | Ibid.

96 | Bifulco & Nato 2024, 10–11.

97 | Ibid. 11.

98 | Ibid.

99 | Ibid, 12.

100 | Tiedeke 2024

101 | Jellinek 1914

102 | Bifulco & Nato 2024, 19.

Court's case law includes this particular concept. In the landmark Lisbon Case,<sup>103</sup> the Federal Constitutional Court stated that, in the case of a conflict of laws, EU law may not claim primacy over the constitutional identity of the Member States.<sup>104</sup> It also reiterated that the Member States permanently remained the masters of the treaties.<sup>105</sup> Numerous constitutional courts, including those of Italy, France, Poland, and the Czech Republic, also asserted their authority to examine violations of their respective national constitutional identity by secondary legal measures undertaken by the EU.<sup>106</sup>

The 'identity clause' first appeared in the Treaty of Maastricht.<sup>107</sup> The reason for the inclusion of the identity clause in the Treaty can be attributed to the fact that the treaty introduced and expanded certain policies that had the potential to impact the fundamental aspects of national sovereignty.<sup>108</sup> As examples of new policies, Blanke states the creation of the European Monetary Union as influencing monetary sovereignty and granting European citizenship with voting rights to non-national EU citizens in local elections, thus impacting the traditional understanding of citizenship, in addition to the creation of new forms of cooperation in the spheres of foreign policy and justice and home affairs.<sup>109</sup>

The governing framework for the relationship between the EU and its Member States is prescribed in Art. 4 TEU.<sup>110</sup> The national identity, inherent in Member

103 | BVerfG, Urteil des Zweiten Senats vom 30. Juni 2009 – 2 BvE 2/08 -, Rn. 1-421.

104 | Par. 332. of the Lisbon Decision reads as follows: "As primacy by virtue of constitutional empowerment is retained, the values codified in Article 2 Lisbon TEU, whose legal character does not require clarification here, may in the case of a conflict of laws not claim primacy over the constitutional identity of the Member States, which is protected by Article 4.2 first sentence Lisbon TEU and is constitutionally safeguarded by the identity review pursuant to Article 23.1 third sentence in conjunction with Article 79.3 of the Basic Law. The values of Article 2 Lisbon TEU, which are contained in part as principles in the current Article 6.1 TEU, do not provide the European union of integration with Kompetenz-Kompetenz, so that the principle of conferral also continues to apply in this respect".

105 | Ibid, par. 231. The Constitutional Court concluded the following: "It follows from the continuing sovereignty of the people which is anchored in the Member States and from the circumstance that the states remain the masters of the Treaties, that – in any case until the formal foundation of a European federal state and the change of the subject of democratic legitimation which must be explicitly effected with it – that the Member States may not be deprived of the right to review compliance with the integration programme". – par. 334.

106 | Blanke 2012, 215–222.

107 | Treaty on European Union, OJ C 191, 29.7.1992. Article F, paragraph 1 reads as follows: "The Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy."

108 | Blanke 2013, 194.

109 | Ibid.

110 | Article 4 reads as follows: "1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States. 2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State. 3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member



States' fundamental structures, is protected in Art. 4(2). Blanke observes that the inclusion of this commitment indicates that there is a widely agreed understanding that, regardless of the advancements in European integration, the Union shall honour the distinct national identities of its Member States.<sup>111</sup> The concept of national identity must be congruent with the values enshrined in Art. 2 TEU, on which the EU is established.<sup>112</sup> Thus, as Blanke concludes, 'it is not any national identity which would be tolerated within EU membership, but only those which promote values on which the Union is founded'.<sup>113</sup>

According to the principle of conferral, the EU is limited to acting within the competences granted to it by the Member States.<sup>114</sup> The Union's powers are limited to those assigned to it by the Member States, as the States established the Union.<sup>115</sup> Despite the transfer of powers, the primary authority and control still lies with the Member States, referred to as residual sovereignty, as they are the 'masters of the Treaties'.<sup>116</sup> The principle of conferral is the main principle on the distribution and limits of the EU's competences.<sup>117</sup> The other two principles are the principle of subsidiarity and the principle of proportionality, which are also prescribed in Art. 5 TEU (paras. 3 and 4).<sup>118</sup>

*States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives."*

111 | Blanke 2013, 195–196.

112 | Art. 2 reads as follows: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

113 | Blanke 2013, 197.

114 | Art. 5 TEU reads as follows: "1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality. 2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States. 3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol. 4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality."

115 | Blanke 2021, 63.

116 | Blanke 2021, 57.

117 | See Weber 2021, 255–286.

118 | Ibid.

### 5.1. Examining the form of instruments and legal basis for circular economy regulation

As Watkins, Van der Ven, and Bondi note, adopting legislation in the form of regulations has, historically, posed more challenges compared to adopting directives.<sup>119</sup> This can be attributed, at least in part, to the resistance of Member States towards legal instruments that limit their flexibility in implementing the legislation. However, findings in Chapter 3 indicate that recent legislative proposals in the field of circular economy imply a decrease in reluctance towards regulations as a form of instrument when developing new EU acts. It is also worth noting that replacing directives with regulations relevant to a circular economy is not unusual, as demonstrated by the entry into force of the regulation concerning batteries and waste batteries, which repealed the Battery Directive in August 2023.

To adhere to the Treaties, it is imperative for the EU to not only respect the limits of its competences but also follow the appropriate procedures and use the correct instruments. As there are specific legislative procedures in certain areas, it is crucial to assess the specific legal basis for any proposed EU measure. The first step involves determining whether the scope of an EU competence allows for its intended action.<sup>120</sup> Blanke further explains that when there are overlaps with competing Member State competences or other competences of the Union that are mutually applicable, the principles of speciality and subsidiarity determine the competence on which an EU measure can rely.<sup>121</sup> In principle, the specific legal basis should take precedence over the general.

According to the Court of Justice of the EU, the selection of the legal basis by the Union must rely on objective factors that can be scrutinised by judicial review.<sup>122</sup> Pursuant to the ‘doctrine of the main or predominant purpose or component’ of a Union measure, a legal act must be based on a competence that aligns with its primary objective. However, if an act simultaneously pursues multiple objectives or consists of several interconnected components, where each is not secondary or indirect in relation to the others, it is necessary for such an act to have a foundation based on various legal bases.<sup>123</sup>

New legislative measures concerning the circular economy are based on either Article 114 of the Treaty on Functioning of the EU<sup>124</sup> (TFEU) or Article 192 TFEU, which serve as the legal basis for all legislative proposals of the Commission (presented in Chapter 3.1). Article 114 TFEU serves as the legal foundation for measures primarily focused on market integration, while also incorporating components of

119 | Watkins, Van der Ven & Bondi 2023, 22.

120 | Blanke 2021, 69.

121 | Ibid. 69.

122 | Case C-411/06, Commission v Parliament and Council (ECJ 8 September 2009), par. 45.

123 | Blanke 2021, 69-70.

124 | Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012.

environmental policy. This article grants the EU the authority to adopt the measures for the approximation of laws to guarantee the successful establishment of the internal market. Article 192 enables the EU to adopt measures to attain the goals set forth in Article 191, which include safeguarding the environment and human health and promoting the prudent and rational exploitation of natural resources.

As Watkins, Van der Ven, and Bondi explain, once internal market harmonisation has been used as the legal foundation, EU Member States are not permitted to implement additional regulatory requirements.<sup>125</sup> It is challenging for the Member States to deviate from the requirements of harmonisation under this approach. However, if environmental protection is used as the legal basis, it would support minimum harmonisation and enable EU Member States to implement more stringent national standards if needed.<sup>126</sup>

The areas that are subject to debates in terms of safeguarding national sovereignty among Member States primarily pertain to concerns surrounding welfare-state policies and the decline in the protection of specific fundamental constitutional rights, notably social and economic rights.<sup>127</sup> Furthermore, Member States primarily strive to assert their sovereignty in the area of freedom, justice, and security,<sup>128</sup> as highlighted in cases of terrorist attacks, the migration crisis, and the asylum-seekers' crisis.<sup>129</sup>

Preserving, protecting, and improving the quality of the environment and the prudent and rational utilisation of natural resources as the basis for legislative measures for the regulation of circular economy so far has not triggered Member States to limit the EU's actions in this field and claim that their sovereignty has been undermined. Moreover, environmental protection is often used as an example of a global issue that cannot be effectively addressed by individual states without international cooperation and coordination.<sup>130</sup>

Both the internal market and environment fall into shared competences of the EU and its Member States. Pursuant to the principle of subsidiarity, in the area of its non-exclusive competences, the EU is only authorised to act when the goals of a proposed action cannot be adequately met by Member States and would be more effectively achieved at the EU level. Therefore, the regulation of the circular economy seems rational at the EU level, as it pertains to an issue that individual states cannot handle on their own. Moreover, the regulation of the circular economy does not seem to be controversial at the EU level (as shown in Chapter

125 | Watkins, Van der Ven & Bondi 2023, 23.

126 | *Ibid.*

127 | Bifulco & Nato 2024, 108.

128 | In 2022, the adoption of a comprehensive raw material policy in Poland greatly bolstered the country's security, particularly in terms of raw material security. For more information see Ledwoń 2023, 100–114.

129 | Bifulco & Nato 2024, 108.

130 | *Ibid.* 12–14.

3), and the fact that the vast majority of Member States have adopted national circular economy strategies even though they were not obliged to do so (as shown in Chapter 4) contributes to this conclusion.

## 6. Conclusion

This paper aimed to investigate how the latest EU CEAP affects the sovereignty of Member States, specifically whether the EU legislative initiatives restrict their national sovereignty. An analysis of the measures from the CEAP reveals that the new action plan includes more legislative measures compared to the 2015 plan. The examination of the advancement in the implementation of legislative measures indicates that, with rare exceptions, Member States are supporting the actions outlined in the CEAP. Moreover, although the CEAP does not require EU Member States to implement a circular economy action plan, 23 of them have chosen to adopt national policies on circular economy.

However, the suitability of the selected instruments for transitioning the economy from a linear to a circular model is uncertain. The report by Watkins, Van der Ven, and Bondi highlights that the EU's strategy for moving towards a circular economy does not place sufficient focus on reducing material resource usage through addressing consumption habits.<sup>131</sup> According to a 2023 report from the European Court of Auditors, the EU's move towards a circular economy is advancing at a slow pace. The report indicates that reaching the target of doubling the circularity rate by 2030 is likely to be very difficult.<sup>132</sup> Current regulations and objectives do not focus on minimising material resource consumption. Watkins, Van der Ven, and Bondi argue that to meet the ambitious goals of the new CEAP, it is imperative to address resource consumption by developing an EU Material Resources Law.<sup>133</sup>

The issues regarding safeguarding national sovereignty among Member States mainly revolve around welfare-state policies and the negative impact on the protection of certain fundamental constitutional rights, particularly social and economic rights. Moreover, Member States are primarily focused on asserting their sovereignty in the realm of freedom, justice, and security, especially in cases such as terrorist attacks, the migration crisis, and the asylum-seekers' crisis.<sup>134</sup> The EU's legislative measures for regulating the circular economy, which focus on protecting the environment and using natural resources rationally, do not fall into these controversial areas and thus far have not negatively influenced the domain of Member States' sovereignty. Indeed, environmental protection is frequently cited

131 | Watkins, Van der Ven & Bondi 2023, 2.

132 | European Court of Auditors 2024, 5.

133 | Watkins, Van der Ven & Bondi 2023, 2.

134 | Bifulco & Nato 2024, 12–14.

as an exemplar of a worldwide issue that requires cooperation and coordination between countries to be effectively addressed. Hence, it is reasonable for the EU to regulate the circular economy, as it is a matter that individual countries cannot adequately tackle on their own.

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