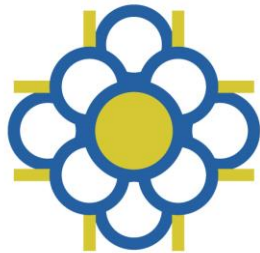


First EU attempt of a legal definition of “Circular Economy”

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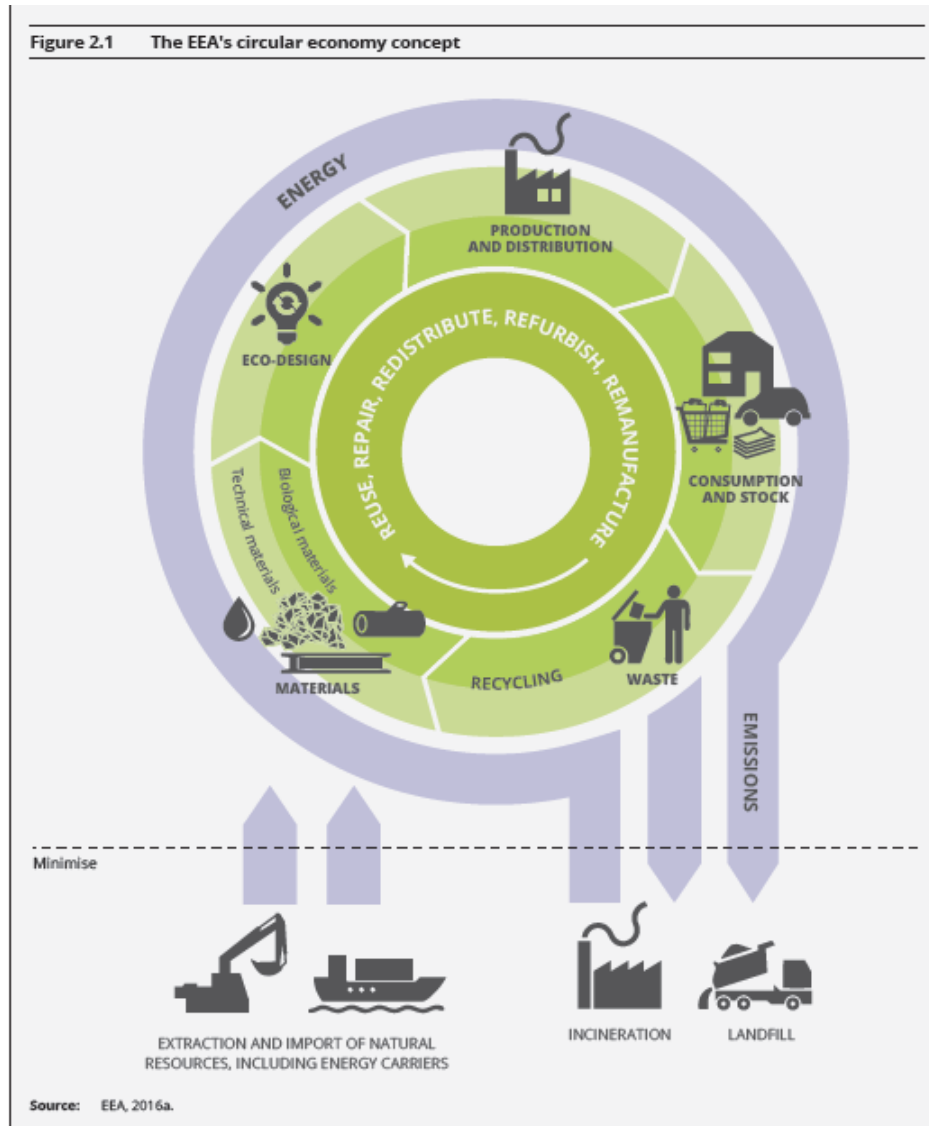


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WHAT IS THE CIRCULAR ECONOMY ABOUT?

Figure 2.1 The EEA's circular economy concept



WHAT IS THE EUROPEAN COMMISSION DOING?

- a [Circular Economy Action Plan](#) (*Dec 2015*)
- a revised [legislative framework on waste](#) (*in force Jul 18*)
- a proposal for a [Directive on the reduction of the impact of certain plastic products on the environment](#) (*in force Jul 19*)
- a proposal for a [Regulation on minimum requirements for water reuse](#)
- a [Monitoring Framework for the circular economy](#)
- (...)

...WHAT ELSE?

An Action Plan: Financing Sustainable Growth (March 2018):

- A proposal for a regulation on the establishment of a framework to facilitate sustainable investment (“**Taxonomy regulation**”)
 - Establishes the conditions and the framework to gradually create a unified classification system ('taxonomy') on what can be considered an environmentally sustainable economic activity.
- A proposal for a regulation on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU)2016/2341
 - Introduces disclosure obligations on how institutional investors and asset managers integrate environmental, social and governance factors in their risk processes.
- A proposal for a regulation amending the benchmark regulation
 - It will create a new category of benchmarks comprising low-carbon and positive carbon impact benchmarks, which will provide investors with better information on the carbon footprint of their investments.

A LEGAL DEFINITION OF “CIRCULAR ECONOMY” IN THE TAXONOMY REGULATION

Text proposed by the Commission vs European Parliament amendment

Text proposed by the Commission

Article 5

Environmental objectives

For the purposes of this Regulation, the following shall be environmental objectives:

- (1) climate change mitigation;
- (2) climate change adaptation
- (3) sustainable use and protection of water and marine resources
- (4) transition to a circular economy, waste prevention ***and recycling***;
- (5) pollution prevention and control;
- (6) protection of healthy ecosystems.

The taxonomy is expected to bring benefits by facilitating the identification of sustainable assets and consequently the integration of sustainability factors in investment decisions. It is also expected to encourage the incorporation of sustainability concerns by corporations and investees into their strategy.

Amendment

Article 5

Sustainability objectives

1. For the purposes of this Regulation, the following shall be environmental objectives:

- (1) climate change mitigation;
- (2) climate change adaptation
- (3) sustainable use and protection of water and marine resources
- (4)** transition to a circular economy, ***including*** waste prevention ***and increasing the uptake of secondary raw materials***;
- (5) pollution prevention and control;
- (6) protection of ***biodiversity and*** healthy ecosystems, ***and restoration of degraded ecosystems***.

1a. The objectives set out in the first paragraph shall be measured by harmonised indicators, life cycle analysis and scientific criteria, and be fulfilled

ensuring they are up to scale to the upcoming environmental challenges.

Text proposed by the Commission

Article 1

Subject matter and scope

1. This Regulation establishes the criteria for determining whether an economic activity *is environmentally sustainable* for the purposes of establishing the degree of environmental sustainability of an investment.
2. This Regulation applies to the following:
 - (a) measures adopted by Member States or by the Union setting out any requirements on market *actors* in respect of financial products or corporate bonds that are marketed as environmentally sustainable.
 - (b) financial market participants offering financial products as environmentally sustainable investments or as investments having similar characteristics.

Amendment

Article 1

Subject matter and scope

1. This Regulation establishes the criteria for determining *the degree of environmental impact and sustainability* of an economic activity for the purposes of establishing the degree of environmental sustainability of an investment.
2. This Regulation applies to the following:
 - (a) measures adopted by Member States or by the Union setting out any requirements on *financial* market participants in respect of financial products or corporate bonds that are marketed *within the Union* as environmentally sustainable.
 - (b) financial market participants offering *within the Union* financial products as environmentally sustainable investments or as investments having similar characteristics, and

Article 3

Criteria for environmentally sustainable economic activities

For the purposes of establishing the degree of environmental sustainability of an investment, an economic activity shall be environmentally sustainable where that activity complies with all of the following criteria:

- (a) the economic activity contributes substantially to one or more of the environmental objectives set out in Article 5 in accordance with Articles 6 to 11;
- (b) the economic activity does not significantly harm any of the environmental objectives set out in Article 5 in accordance with Article 12;
- (c) the economic activity is carried out in compliance with the minimum safeguards laid down in Article 13;
- (d) the economic activity complies with technical screening criteria, where the Commission has specified those in accordance with Articles 6(2), 7(2), 8(2), 9(2), 10(2) and 11(2).

Article 3

Criteria for environmentally sustainable economic activities

For the purposes of establishing the degree of environmental sustainability of an investment, an economic activity shall be environmentally sustainable where that activity complies with all of the following criteria:

- (a) the economic activity contributes substantially to one or more of the environmental objectives set out in Article 5 in accordance with Articles 6 to 11;
- (b) the economic activity does not significantly harm any of the environmental objectives set out in Article 5 in accordance with Article 12;
- (c) the economic activity is carried out in compliance with the minimum safeguards laid down in Article 13;
- (d) the economic activity complies with technical screening criteria, where the Commission has specified those ***on the basis of harmonised measuring sustainability impact at company or plan levels belonging to the economic activity*** ***and*** in accordance with Articles 6(2), 7(2), 8(2), 9(2), 10(2) and 11(2).

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

(a) 'environmentally sustainable investment' means an investment that funds one or several economic activities that qualify under this Regulation as environmentally sustainable;

(g) 'circular economy' means maintaining the value of products, materials and resources in the economy for as long as possible, and minimising waste, including through the application of the waste hierarchy as laid down in Article 4 of Directive 2008/98/EC of the European Parliament and of the Council⁵⁰;

It may be surprising that the “circular economy” concept, which focuses on the cycle of resources, is not defined in the waste regulation but in the sustainable investments one. This fact is nothing else than the reflection of the **marked economic character of environmental law**.

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

(a) 'environmentally sustainable investment' means an investment that funds one or several economic activities that qualify under this Regulation as environmentally sustainable;

(g) 'circular economy' means maintaining the value ***and usage*** of products, materials and ***all other*** resources in the economy ***at their highest level*** for as long as possible, ***and thus reducing environmental impact*** and minimising waste, including through the application of the waste hierarchy as laid down in Article 4 of Directive 2008/98/EC of the European Parliament and of the Council⁵⁰ ***and minimising the use of resources based on key circular economy indicators as set out in the monitoring framework on progress towards a circular economy, covering different stages of production, consumption, waste management.***

Article 9

Substantial contribution to the circular economy **and** waste prevention and **recycling**

1. An economic activity shall be considered to contribute substantially to the transition to a circular economy **and** waste prevention and recycling where that activity contributes substantially to that environmental objective through any of the following means:

- (a) improving the efficient use of raw materials in production, including through reducing the use of primary raw materials and increasing the use of by-products and waste;
- (b) increasing the **durability, reparability, upgradability or reusability** of products;
- (c) increasing the recyclability of products, including of individual materials contained in products, inter alia through substitution or reduced use of products and materials that are not recyclable;
- (d) reducing the content of hazardous substances in materials and products;

Article 9

Substantial contribution to the circular economy, **including** waste prevention and **increasing the uptake of secondary raw materials**

1. An economic activity shall be considered to contribute substantially to the transition to a circular economy, **including** waste prevention, **re-use** and recycling, **covering the entire life cycle of a product or economic activity in different stages of production, consumption and end of use**, where that activity, **in line with the EU acquis**, contributes substantially to that environmental objective through any of the following means:

- (a) **improving the efficient use of raw materials and resources** in production, including through reducing the use of primary raw materials and increasing the use of by-products and **secondary raw materials, thus supporting end of waste operations**;
- (b) **designing, manufacturing and increasing the use of products that are resource-efficient, durable (including in terms of life span and absence of planned obsolescence), repairable, re-usable and upgradable**;
- (c) **designing out of waste products and increasing the reusability and recyclability of products**, including of individual materials contained in products, inter alia through substitution or reduced use of products and materials that are not recyclable;
- (d) **reducing the content of hazardous substances and substituting substances of very high concern** in materials and products, **in line with the harmonised legal requirements laid down at Union level, particularly, with the provisions laid down by EU legislation ensuring safe management of substances, materials and products and waste**;

- (e) prolonging the use of products including through increasing reuse, remanufacturing, upgrading, repair and sharing of products by consumers;
- (f) increasing the use of secondary raw materials and their quality, including through high-quality recycling of waste;
- (g) reducing waste generation;
- (h) increasing preparing for re-use and recycling of waste;
- (i) avoiding incineration and disposal of waste;
- (j) avoiding and cleaning-up of litter and other pollution caused by improper waste management;
- (k) using natural energy resources efficiently.

- (e) **prolonging the use of products** including through increasing reuse, remanufacturing, upgrading, repair and sharing of products by consumers;
- (f) **increasing the use of secondary raw materials and their quality, including through high-quality recycling of waste**;
- (g) **reducing waste generation including waste generation in processes related to industrial production, extraction of minerals, manufacturing, construction and demolition**;
- (h) **increasing preparing for re-use and recycling of waste in accordance with the waste hierarchy**;
- (ha) **increasing the development of waste management infrastructure needed for prevention, re-use and recycling**;
- (i) **avoiding incineration, disposal and landfilling of waste in line with the waste hierarchy**;
- (j) **avoiding, reducing and cleaning-up of litter and other pollution including prevention and re-avoidance of marine litter**, caused by improper waste management;
- (ja) **reducing the generation of food waste in primary production, in processing and manufacturing, in retail and other distribution of food, in restaurants and food services as well as in households**;
- (k) **using natural energy resources, raw materials, water and land** efficiently;
- (ka) **fostering bio-economy through the sustainable use of renewable sources for the production of materials and commodities**.

2. The Commission shall adopt a delegated act in accordance with Article 16 to:

(a) supplement paragraph 1 to establish technical screening criteria for determining under which conditions a specific economic activity is considered, for the purposes of this Regulation, to contribute substantially to the circular economy and waste prevention and recycling;

(b) supplement Article 12 to establish technical screening criteria, for each relevant environmental objective, for determining whether an economic activity in respect of which screening criteria are established pursuant to point (a) of this paragraph is considered, for the purposes of this Regulation, to cause significant harm to one or more of those objectives.

3. The Commission shall establish the technical screening criteria referred to in paragraph 2 together in one delegated act, taking into account the requirements laid down in Article 14.

4. The Commission shall adopt the delegated act referred to in paragraph 2 by 1 July 2021, with a view to ensure its entry into application on 31 December 2021.

2. The Commission shall adopt a delegated act in accordance with Article 16 to:

(a) supplement paragraph 1 to establish technical screening criteria, based on the Commission's circular economy indicators, for determining under which conditions a specific economic activity is considered, for the purposes of this Regulation, to contribute substantially to the circular economy and waste prevention and recycling,

(b) supplement Article 12 to establish technical screening criteria, *based on the Commission's circular economy indicators*, for each relevant environmental objective, for determining whether an economic activity in respect of which screening criteria are established pursuant to point (a) of this paragraph is considered, for the purposes of this Regulation, to cause significant harm to one or more of those objectives.

3. The Commission shall establish the technical screening criteria based on the Commission's circular economy indicators referred to in paragraph 2 together in one delegated act, taking into account the requirements laid down in Article 14.

4. The Commission shall adopt the delegated act referred to in paragraph 2 by 1 July 2021, with a view to ensure its entry into application on 31 December 2021.

The proposed regulation will enable the Commission to establish **technical screening criteria** through a series of delegated acts, **the first of which will cover economic activities generating a substantial contribution to climate change mitigation and adaptation.**

Text proposed by the Commission

Article 12

Significant harm to environmental
objectives

For the purposes of *Article* 3(b), an economic activity shall be considered as significantly harming:

(d) circular economy and waste prevention and recycling, where that activity leads to significant inefficiencies in the use of materials *in one or more* stages of the life-cycle of products, including in terms of durability, reparability, upgradability, reusability or recyclability of products; or where that activity leads to a significant increase in the generation, incineration or disposal of waste;

Amendment

Article 12

Significant harm to environmental
objectives

1. For the purposes of Article 3(b), ***taking into account its full life cycle***, an economic activity shall be considered as significantly harming:

(d) circular economy and waste prevention and recycling, where that activity leads to significant inefficiencies in the use of materials ***and resources, such as non-renewable energy, raw materials, water and land, directly or indirectly in different*** stages of the life-cycle of products ***including inefficiencies related to features designed to limit the lifetime of products and*** including in terms of durability, reparability, upgradability, reusability or recyclability of products; or where that activity leads to a significant increase in the generation, incineration or disposal of waste.

CONCLUSIONS

- ❖ We are witnessing **the making of the legal definition of circular economy** in a regulation of economic nature.
- ❖ This **definition will provide us with the required legal certainty** in order to apply all the obligatory content related to this concept.
- ❖ The “Taxonomy Regulation” **not only give us a definition, but also establishes the criteria to determine when an activity should be considered circular or not.**
- ❖ This regulation **could have important implications for the waste treatment sector activities.** For example, **it could condition the validity of the authorizations of these activities.** Similarly as happens in France regarding the waste hierarchy principle, where various courts have cancelled certain waste treatment activities for not acting according to this principle.

Thank you!



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