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The *EU-Japan Digital Partnership*: Setting standards and shaping rules?

On 12 May 2022, the EU and Japan announced the conclusion of the *EU-Japan Digital Partnership* at their bilateral summit. This is the first such digital partnership concluded by the EU, and it aims at advancing cooperation "*on a wide range of digital issues to foster economic growth and achieve a sustainable society through an inclusive, sustainable, human-centric digital transformation*". The growing importance of digital trade creates significant commercial opportunities and underscores the need for a common understanding on the principles and rules governing such trade. While the *EU-Japan Digital Partnership* is heavy on aspirations for enhanced cooperation, it looks poised to set the stage for future international cooperation and negotiations to develop common regulatory approaches.

The EU's Indo-Pacific Strategy as a pace setter for enhanced cooperation

The *EU-Japan Digital Partnership* is, in part, an outgrowth of the September 2021 Joint Communication by the European Commission (hereinafter, Commission) and the High Representative of the Union for Foreign Affairs and Security Policy regarding *The EU strategy for cooperation in the Indo-Pacific* (hereinafter, *Indo-Pacific Strategy*), under which the "*EU intends to increase its engagement with the region to build partnerships that reinforce the rules-based international order, address global challenges, and lay the foundations for a rapid, just and sustainable economic recovery that creates long-term prosperity*". One element of the *Indo-Pacific Strategy* is that the EU aims at utilising international digital partnerships with the countries of the Indo-Pacific region, namely Australia, China, India, Japan, the Republic of Korea, the Republic of South Africa, as well as the ten Member States of the Association of Southeast Asian Nations (ASEAN), to facilitate digital trade (which is defined as "*digitally enabled trade in goods and services, whether digitally or physically delivered, covering cross-border trade and data flows*"), notably by enhancing "*technical, policy and research cooperation with partners on infrastructures, digital transformation of business and public services, and skills development*". According to the EU's *Indo-Pacific Strategy*, digital partnerships are intended to provide an over-arching framework for the EU and "*like-minded*" partners to cooperate on identified common areas of interest relevant for advancing the digital economy and, "*in the most advanced cases",* the EU would *"seek to formalise such partnerships through Digital Partnership Agreements",* which are intended to: 1) Expand on existing bilateral trade and investment relationships; 2) "*Enable deepened cooperation on data governance, trusted flows and data-based innovation*"; and 3) "*Complement ongoing*

negotiations on e-commerce within the World Trade Organisation on specific issues that are relevant for the facilitation of digital trade".

Since the presentation of the *Indo-Pacific Strategy*, the EU has intensified its engagement with individual trading partners in the region. In addition to the *EU-Japan Digital Partnership*, the EU has started negotiations for similar agreements with Singapore and the Republic of Korea. Perhaps unsurprisingly, some of these counterparties are actively engaged in expanding their network of digital partnership agreements. Notably, Singapore has, for its part, concluded so-called "*Digital Economy Agreements*" with Australia, Chile and New Zealand, the Republic of Korea, and the UK (see *Trade Perspectives*, *Issue No. 2 of 31 January 2022*). Singapore's *Digital Economy Agreements* are very detailed, broad in scope, and contain clear commitments relating to, *inter alia*, personal data protection, cross-border data transfers, and a prohibition on data localisation requirements, which contrasts with the cooperation-focused approach of the *EU-Japan Digital Partnership*.

The evolution of the EU's approach to digital trade policy

The EU is generally considered a world leader in relation to the development of (often innovative) trade rules and policies. However, in the realm of digital trade, the EU has been a relative latecomer and its approach has only recently migrated from general apprehensiveness, to soft pledges of cooperation and, finally, to more concrete and binding language. The *EU-Japan Economic Partnership Agreement* (hereinafter, EPA), which entered into force in February 2019, is a good example of the EU's evolving approach. The EPA liberalises trade in goods and services, and also includes a chapter on electronic commerce (hereinafter e-commerce), an element of digital trade that specifically addresses the sale and purchase of goods or services via digital platforms. The chapter provides for a number of binding commitments aimed at facilitating e-commerce, containing, *inter alia*, a prohibition of customs duties on electronic transmissions and rules on the validity of contracts concluded electronically.

However, the EU-Japan EPA does not provide for any commitment on cross border data flows (*i.e.*, movement of data through a system comprised of software, hardware or a combination of both). Rather, at the time of the negotiations, the EU and Japan agreed to review, within three years of the entry into force of the EU-Japan EPA, "*the need for inclusion of provisions on the free flow of data".* Despite the agreement on the Digital Partnership, discussions between the EU and Japan to review and possibly update the commitments on data flows of the EU-Japan EPA are still ongoing.

The EU-Japan Digital Partnership

Essentially, the *EU-Japan Digital Partnership* establishes a framework for enhanced cooperation between the Parties on identified priority areas, as listed in Section 4 on '*Achieving joint results in priority areas for enhanced digital cooperation*' and in the Annex to the *EU-Japan Digital Partnership*, which provides an *Initial set of joint actions* that will be undertaken. Notably, the *EU-Japan Digital Partnership* contains cooperation commitments related to the regulation of online platforms, privacy rules, digital trade, '*Data free flow with trust*', and international standardisation, aspects that currently are not subject to commitments under the EU-Japan EPA. Other commitments relate to cooperation on '*Global semiconductor supply chains'*, '*5G and Beyond 5G technologies*', '*High performance computing and quantum technology'*, *'Digital connectivity*', '*SME's digital transformation'*, '*Blockchain and Distributed Ledger Technologies*', and '*Digital education'*. The "*Initial set of joint actions*" would focus on these identified priority areas by establishing enhanced information exchange on regulatory approaches, cooperation on research and innovation, cooperation on connectivity infrastructures, and interoperable network technologies, which would be supported by business-driven initiatives.

In the area of digital trade, the EU and Japan commit to "*seek a common understanding on digital trade principles building on the EPA covering issues relevant for digital trade such as,*

inter alia, paper-less trading, electronic invoicing, electronic transactions framework and digital identities, online consumer protection, cybersecurity, source code and cryptography". While such commitments are laudable, it should be noted that these aspects of digital trade policy are seen as relatively uncontroversial. With respect to privacy rules, the EU and Japan "*recognise high privacy standards as an essential element of a human-centric approach to the opportunities and challenges of our digital age*" and "*intend to pursue further cooperation with regard to the protection of personal information on issues such as the impact of certain emerging technologies on privacy, privacy-enhancing technologies and enforcement cooperation between supervisory authorities responsible for data protection*".

On a related, but more controversial matter, the EU and Japan pledge to cooperate on '*Data free flow with trust'*, a concept meant to convey concerns relating to the privacy of individual and company-level data, and characteristic of the EU's strong internal safeguards on international data transfers, which stem from the EU's personal data protection rules – wherein cross-border data transfers are provided through mechanisms such as '*adequacy decisions*' granted by the Commission, and standard contractual agreements for businesses. In this regard, the Parties recall their mutual adequacy decisions, which indicate that both Parties' regulatory frameworks offer an adequate level of data protection, in other words, from an EU perspective, data transfers to Japan would be assimilated to intra-EU transmissions of data (and *vice versa*).

In further cooperating on *'Data free flow with trust'*, the Parties commit to "*promoting technologies enhancing trust, deepening mutual understanding of data governance on both sides, and on that basis working together to enhance international cooperation to address unjustified obstacles for the free flow of data across borders while preserving the regulatory autonomy of both sides in the area of data protection and privacy*". However, the provisions on *'Data free flow with trust'* do not refer to the review of the addition of related rules in the EU-Japan EPA and mandated review.

Addressing businesses' needs

There is little doubt that a greater degree of harmonisation and cooperation among countries on issues related to digitalisation and trade could reap large benefits for businesses and consumers alike. According to the *Organisation for Economic Co-operation and Development* (OECD), cross-border data transfers facilitate the establishment of global value chains. In fact, a study conducted by *Frontier Economic* for *DIGITALEUROPE*, a European trade association that represents the digital technology industry, shows that the growth of the digital economy and the success of EU-based companies is largely dependent on the ability to securely transfer data. The *EU-Japan Digital Partnership* could pave the way towards greater harmonisation and trade facilitation, contributing to increased commercial and trade opportunities between these two important trading partners. Notably, the *EU-Japan Digital Partnership* foresees the involvement of the private sector in various instances, an opportunity that businesses and relevant trade associations should seize in order to contribute to shaping the future regulatory environment. However, the *EU-Japan Digital Partnership* has also been criticised for the lack of specific commitments. On 9 May 2022, the *European Services Forum* (hereinafter, ESF), a trade association representing the European services industries, noted, in a letter addressed to the EU and Japan, that it welcomed the negotiations for *digital partnerships*, but underlined the "*urgency and opportunity for both countries to negotiate an improved framework for data localisation and cross-border data transfers in the context of the EU-Japan EPA*".

Putting the Partnership into action

The *EU-Japan Digital Partnership* "*intends to provide for the over-arching framework of bilateral cooperation in the digital field for both sides*". Notably, the EU and Japan underline that the partnership itself would "*not create legal obligations on either side but will be based on voluntary cooperation*". Rather, the *EU-Japan Digital Partnership* "*is expected to prepare deliverables in the areas identified, building on existing cooperation mechanisms*". The *EU-Japan Digital Partnership* notes that the priority areas for cooperation would be "*reviewed and*

updated on a regular basis through the Japan-EU Digital Partnership Council", which refers to an annual meeting at ministerial level. Additionally, regular stakeholder participation and involvement is envisaged. In their *Joint Statement*, following the EU-Japan Summit, the EU and Japan announced that the *EU-Japan Digital Partnership* would be implemented "*without delay*". Interested stakeholders should closely follow the developments and actively participate in the forthcoming activities under the *Digital Partnership*.

Thailand's *Personal Data Protection Act* takes effect: A new step towards digital economic transformation

On 1 June 2022, after a two-year delay due to the *COVID-19* pandemic, Thailand's very first *Personal Data Protection Act* (hereinafter, PDPA), which outlines the obligations of businesses when collecting and processing personal data, officially entered into force. In implementing the PDPA, Thailand follows in the footsteps of three of its trading partners within the Association of Southeast Asian Nations (hereinafter, ASEAN), namely Singapore, Malaysia and the Philippines, by setting forth a consolidated data privacy law. While the PDPA's standards on data protection will potentially provide a safe and secure environment for electronic commerce (hereinafter, e-commerce) and increased trade opportunities for Thailand, there might also be difficulties associated with its implementation, especially regarding the readiness of small and medium-sized enterprises (hereinafter, SMEs) to comply with the strict standards of data protection.

Overview of Thailand's Personal Data Protection Act

Thailand's motivations for enacting the PDPA were generated not merely by theoretical justifications, but also by real-world experiences, including significant data breaches in crucial sectors of the Thai economy, such as tourism and health. For instance, in 2021, the personal data of 106 million visitors to Thailand were breached, exposing travellers' data, such as full names, arrival dates, passport numbers, visa information, and Thai arrival card numbers. Such breaches pose a serious threat to tourism, which is an important sector of Thailand's economy, and it is no surprise that the PDPA is aimed at, *inter alia*, preventing similar breaches.

The PDPA is broad in scope, applying to businesses or organisations that are based in Thailand or abroad, but that manage and handle data related to products, services, and consumer behaviour in Thailand. Pursuant to Section 6 of the PDPA, '*Personal Data*' is defined as "*any information relating to a person, which enables the identification of such person, whether directly or indirectly, but not including the information of a deceased person in particular*".

Section 19 of the PDPA provides protection for the data subject (*i.e.*, a data owner whose personal data is collected, used or distributed by the data controller), by requiring the explicit consent to approve the collection, use, and disclosure of personal data. In requesting consent from the data subject, the personal data controller, referring to a person or entity that has the power and duty to make decisions regarding the collection, use, or disclosure of personal data, must inform the person of the purpose of the use, collection, or disclosure of the personal data and the request for consent must be presented in a clear and accessible manner by using plain language that is not misleading to the data subject. The data controller also has the obligation to establish appropriate security measures to prevent any data breach or the illegal disclosure of any personal data. Therefore, data collectors must ensure that they operate an adequate information technology system to ensure the processing of personal data in line with the rules.

Inter alia, the implementation of the PDPA imposes strict obligations on companies when dealing with cross-border data transfers and establishes practical guidelines and penalties for any misuse of personal data in e-commerce activities. In addition, Section 28 of the PDPA also provides for strict data transfer obligations, requiring that the transfer of personal data to another country may only occur if the destination country (or international organisation)

receiving such data maintains an '*adequate*' data protection standard. The concept of '*adequate*', however, has yet to be defined.

The PDPA falls under the supervision of Thailand's Ministry of Digital Economy and Society. To ensure the effective implementation of, and compliance with, the PDPA, Section 8 thereof directs the Government of Thailand to establish the *Personal Data Protection Committee* (hereinafter, PDPC). The PDPC will be responsible for planning the promotion and protection of personal data, establishing guidelines, and issuing various sub-regulations. In connection with the PDPA, Thailand's Ministry of Digital Economy and Society has been drafting 29 related implementing regulations, and is expected to also establish personal data protection guidelines for certain sectors including, *inter alia,* e-commerce, retail, healthcare, education, and tourism. A violation of the requirements laid out in the PDPA is subject to a range of consequences depending on the severity of the infraction, including criminal liability, punitive damages, and fines ranging from THB 500,000 (USD 14,500) to THB 5 million (USD 145,400).

Balancing benefits and challenges

It is important to recognise that the implementation of the PDPA will likely not come about without challenges. Indeed, the PDPA will impose additional obligations on covered businesses, particularly given that Thailand went from having no data protection law to mandating compliance with comparatively strict international data protection requirements. Perhaps unsurprisingly, these obligations are apt to be felt most acutely by SMEs. As the PDPA requires data controllers to establish appropriate security measures to prevent data breaches, businesses must provide adequate technology to comply with the PDPA, notably by investing in new IT systems and hiring qualified IT and legal professionals to ensure and monitor their compliance with the PDPA. According to a survey on PDPA preparedness conducted earlier this year by the *Thai Board of Trade and the University of the Thai Chamber of Commerce*, only 8% of 4,000 businesses surveyed stated they had taken measures to comply with the new rules. Given the fact that SMEs account for more than one third of Thailand's GDP, it is important for Thailand's Ministry of Digital Economy and Society to closely monitor and assist SMEs in the implementation of the PDPA. Most notably, it should be ensured that the PDPA does not act as a deterrent to the digitalisation of SMEs, which would erode their long-term competitiveness.

Despite the challenges that might be faced by SMEs, the entry into force of the PDPA is still considered timely, given that Thailand is currently experiencing an increase in the use of e-commerce and digital payments. As of 2020, Thailand's e-commerce market had reached a value of more than USD 27.7 billion and there is every expectation that this figure will continue to increase in the coming years. Hence, personal data protection rules are crucially needed to ensure a stable and safe environment for e-commerce.

The PDPA as a trade enhancing instrument for Thailand?

The PDPA supports data regulation, e-commerce, and online banking standards that are in line with some of the more ambitious international data protection standards schemes in the world. This is due to the fact that the PDPA is heavily influenced by the EU's *General Data Protection Regulation* (GDPR), which is generally recognised as the world's model data privacy and security regulation. The implementation of the PDPA could, therefore, act as a trade facilitative element as it would potentially ensure the compliance of Thai businesses with standards of data protection contained in Preferential Trade Agreements (hereinafter, PTAs) to which Thailand is a party. This is true both at a regional level, as well as for partnerships outside ASEAN. For instance, Chapter 12 on e-commerce of the *Regional Comprehensive Economic Partnership Agreement* (RCEP), an agreement grouping the ASEAN Member States and five regional trading partners (*i.e.,* China, South Korea, Australia, New Zealand, and Japan), provides for commitments on online consumer protection and online personal information protection. Articles 12.7 and 12.8 of the RCEP mandate the adoption of a legal framework to protect the personal information of e-commerce users.

In addition to ensuring compliance with existing PTAs, the PDPA would also conceivably open Thailand to trade negotiations and enhanced trade relations with like-minded partners in data protection, notably the EU. Indeed, given that the EU and Thailand are expected to soon resume their negotiations for a bilateral Free Trade Agreement, the implementation of the PDPA may help to support trade negotiations between Thailand and the EU, as compliance with the PDPA would help businesses in Thailand satisfy the EU's typically strict requirements on cross-border data transfers.

The importance of Personal Data Protection rules for e-commerce within ASEAN

On 22 January 2019, cognisant of the importance of e-commerce for ASEAN's economy, which has a projected value of USD 146 billion by 2025, Thailand, and the other ASEAN Member States collectively signed the *ASEAN Agreement on Electronic Commerce*, which highlights the commitment to cooperate on electronic transaction security, including the protection of online personal information as stipulated under Article 6 of the Agreement. In addition, Article 7(4) and (5) of the Agreement evidence ASEAN's commitment to adopting measures aimed at ensuring the protection of personal information of e-commerce users and facilitating cross-border e-commerce by eliminating barriers related to the flow of cross-border information. However, as the *ASEAN Agreement on Electronic Commerce* merely provides for enhanced cooperation on e-commerce, is currently limited to trade in services, and does not provide for strong commitments, each ASEAN Member State needs to develop its own regulatory framework on Personal Data Protection. Therefore, the implementation of Personal Data Protection laws by all ASEAN Member States would not only help to strengthen the domestic data protection regime, but would also provide a safer and more regionally integrated digital economy, increase e-commerce trade, and support the further development of e-commerce within ASEAN, particularly when it comes to data sharing.

Taking stock of the PDPA

As the PDPA only recently entered into force, its effects on businesses and trade will require some time to become fully apparent. Considering that the PDPA affects businesses in Thailand and abroad, which manage, use, and collect data in Thailand, it is important for impacted stakeholders to fully understand the law, identify provisional requirements of relevance, ensure compliance, and mitigate any risks associated with non-compliance with the various PDPA obligations and standards. For example, an important internal step might be to ensure that employees of covered companies are trained and have a good understanding of how the PDPA operates. It is also important for related stakeholders to closely monitor any guidelines that will be published by the PDPC to ensure full compliance with the PDPA.

Denmark's planned "*State-controlled climate label*": Another environmental sustainability label ahead of the expected EU initiatives?

On 16 April 2022, Denmark's Minister for Food, Agriculture and Fisheries, *Rasmus Prehn,* announced Denmark's intention to "*become the first country in the world to have a state-controlled climate label*". This governmental initiative looks poised to add another label to the multitude of sustainability labels that are already being used by the private sector. This article surveys the efforts of Denmark and others to develop and propagate such labels and looks at the evolving legal framework applicable, in broader terms, to sustainability labelling in the EU.

Denmark's planned "*State-controlled climate label*"

Minister *Prehn* would like to see Denmark "*at the forefront of the global scene, showing the way forward in the green transition*". Guided by this motivation, Minister *Prehn* announced that, with the climate label, consumers would be able to make "*green choices*" more easily when shopping, and that, at the same time, the climate label would "*push food production in a more climate-friendly direction*". While other sustainability schemes cover a multitude of much

broader factors, Denmark appears to plan to focus only on "*climate*" aspects. According to Minister *Prehn*, the climate label would also contribute to Denmark realising the UN's Sustainable Development Goals, especially Goal 12 that aims at ensuring responsible consumption and production. Minister *Prehn* emphasised that a State-controlled climate label must ensure that "*there is one common climate label that consumers can trust and that the retail trade and the food industry will widely use*". Denmark's Government allocated DKK 9 million (around EUR 1.2 million) to prepare the labelling scheme, "*gathering the most important players*" in a working group that is to deliver a proposal on the climate label by the end of the year. It is notable that the announcement of Denmark's Government still lacks details on important questions relating to what the climate label would cover and on which parameters it would be based. The Terms of Reference of the Working Group on the Development of the Climate Label for Food note that the label would be voluntary for operators and notes that, "*in the work on a national climate label, conclusions, recommendations and any rules from the EU in relation to the model, data basis and method*" would be assessed, including the Commission's forthcoming legislation on green claims and the Commission's methodology basis for *Product Environmental Footprint Category Rules (PEFCR)*. The terms of reference, however, also note that "*it should be possible to assess alternative data sets and methods*".

It is conceivable that the resultant label will reflect some of the other initiatives that Denmark has provided to consumers where climate is concerned. Notably, in January 2021, the Danish Veterinary and Food Administration (DVFA) published its *Official Dietary Guidelines* for the first time ever, not only guiding Danes on how to eat healthier, but also on how to eat more climate-friendly. However, the climate-friendly guidance mainly makes rather simplistic statements, noting, *inter alia*, that "c*ereal products have a low climate footprint compared to other foods*", that "*vegetable oils have a smaller climate footprint than butter and spreadable products*", and that "water *from the tap is the most climate friendly choice*".

The emergence of private environmental labels in the EU

While Denmark's prospective climate label appears relatively unique - at least insofar as it is a State-controlled label only focussing on climate impact - it is far from the only offering on the EU market. Already in early 2021, the retailers *Colruyt* in Belgium and *Lidl* in Germany, respectively, announced the implementation of the *Eco-Score* labelling scheme for some of their own-brand products, which aims at indicating the environmental impact of food products in a simplified way. *Eco-Score* looks very similar to *Nutri-Score*, which is a widely used voluntary nutrition label across the EU. *Eco-Score* was developed in France by the *ECO2* Initiative, led by a consulting firm focussing on environmental transition. The method for calculating the *Eco-Score* consists of two components: 1) A life cycle analysis (LCA) of a food product, which takes into account 16 impact categories that play an important role from the creation to the disposal of a product, such as climate change, water use, land use, and acidification; and 2) Additional criteria, such as biodiversity, organic production, fair-trade and other certifications, packaging, origin of products, transport, and recyclability. These elements are converted by the system's algorithm into a code for a food product consisting of five letters, each with its own colour, ranging from A (green) for the lowest environmental impact of a product to E (red) for the highest environmental impact. While the *Eco-Score* grade associated to a product indicates general information about the sustainability of a given product *group*, the grade is not meant to and cannot convey any information to the consumer on any specific environmental impact of a particular product.

A similar summary label, with graded information on the product's environmental impact, is the *Eco Impact* scheme from the *Foundation Earth* and which is supported by food manufacturers like *Nestlé*, *PepsiCo*, *Danone*, and *Tyson Foods*.

In February 2022, another labelling rating system, the *Enviroscore* label was presented, which aims at enabling easy recognition of the degree of environmental sustainability of food and beverages. *Enviroscore* has been developed by the Basque *AZTI Research Centre* and the University of Leuven, Belgium. According to its creators, the *Enviroscore* system measures a product's impact, based on the European Commission's Product Environmental Footprint (PFF) methodology, to standardise the way of performing lifecycle assessments (LCAs). An algorithm combines 16 environmental impacts into a single final score, taking into account, *inter alia*, climate change potential, ozone layer depletion, water pollution, fossil resource exhaustion and toxicity. Based on that analysis, the aggregate score is converted into a five-level communication system from A to E and corresponding colours, very much like the *Eco-Score scheme*. This classification covers all aspects associated with how that product is produced, processed, packaged, distributed, and consumed and how its waste is managed.

The EU's *Farm to Fork Strategy and environmental sustainability labels*

In May 2020, the European Commission (hereinafter, Commission) adopted the *Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system* (hereinafter, F2F Strategy), as part of the *European Green Deal*. The F2F Strategy announced that, in order to promote sustainable food consumption and to facilitate the shift to healthy and sustainable diets, the Commission would adopt measures to empower consumers to make informed, healthy and sustainable food choices. As regards environmental labels, the F2F Strategy announced that the Commission would "*examine ways to harmonise voluntary green claims and to create a sustainable labelling framework that covers, in synergy with other relevant initiatives, the nutritional, climate, environmental and social aspects of food products". Following* an initial feedback period in 2021, a consultation on the sustainable food system framework initiative, including labelling, is currently held until 21 July 2022.

The evolving legal framework on environmental sustainability labelling in the EU

The Commission is also currently preparing a legislative proposal on "*substantiating environmental claims*". The related Inception Impact Assessment (*i.e.*, Roadmap) notes that it concerns "*claims made in relation with the environmental impacts covered by the Environmental Footprint methods*". According to the *Product Environmental Footprint (PEF) Initiative,* these methods measure the environmental performance of a product throughout the value chain, from the extraction of raw materials to the end of life, using a large variety of environmental impact categories: "*Some of them are focused on a single issue, e.g. carbon footprint, whereas some encompass multiple environmental themes*".

The Commission's *Roadmap* points out that, "*in order not to mislead, environmental claims should be presented in a clear, specific, unambiguous and accurate manner".* The initiative aims to "*make the claims reliable, comparable and verifiable across the EU – reducing 'greenwashing' (companies giving a false impression of their environmental impact)*", which in turn "*should help commercial buyers and investors make more sustainable decisions and increase consumer confidence in green labels and information*". A proposal for a regulation on environmental claims was planned for the first quarter of 2022, but has been delayed.

Furthermore, on 30 March 2022, the Commission published a proposal for a *Directive on Consumer empowerment for the green transition*, aiming at establishing specific rules to combat *greenwashing*. The proposed Directive would, *inter alia*, amend the Annex to *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and* would consider as unfair and, therefore, prohibited, the practices of "*Displaying a sustainability label which is not based on a certification scheme or not established by public authorities*", and "*Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim*". Most notably, "*environmental claim*" would be defined as "*any message or representation, which is not mandatory under Union law or*

national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a positive or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time (…)". Given the apparent breadth of coverage, voluntary climate labels as a category of environmental sustainability labels would appear to fall under this definition.

Outlook for environmental claims and labels

The efficacy of a label is rooted in the trust it builds up in those who rely on it. That trust derives from, *inter alia*, the manner in which claims (including claims about nutritional or environmental properties) on the label are substantiated and the credibility of the party managing the label. In Denmark, stakeholders reportedly support the climate label when there is assurance "*that it has credibility and can have an impact in line with the organic label, the keyhole label, and the Nordic Ecolabel*". It cannot be ruled out that Denmark's climate label would not be a "*grading*" label, like the environmental labels discussed above, but a so-called "*endorsement*" label that can be applied only on foods complying with certain environmental criteria, which would be akin to the keyhole label for nutritional criteria.

Importantly, there are often questions raised about the authenticity of the professed motivations giving rise to such labels. While the Commission adopted proposals for a *Regulation on the substantiation of environmental claims* and a *Directive on consumer empowerment for the green transition*, summary labels with graded information on the product's environmental impact like *Eco-Score, Eco Impact, Enviroscore* are spreading around the EU. Despite the claim by supporters of such labelling schemes that they are transparent and strictly take into consideration scientific criteria on the environmental impacts, these schemes are also often criticised for being mere marketing tools, in particular as they do not convey any useful information on specific environmental impacts. In light of the foregoing, the forthcoming EU legal framework, requiring companies making environmental *claims* to substantiate them, appears to be the right way forward. Claims should inform and educate consumers, rather than simply influence their purchasing decisions. Stakeholders in the agri-food sector should carefully observe the initiative in Denmark and the regulatory developments in the EU on environmental claims and labels, taking actions to ensure that their legitimate interests are voiced and represented within all relevant *fora*.

Recently adopted EU legislation

Trade Law

- *Regulation(EU) 2022/870 of the European Parliament and of the Council of 30 May 2022 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part*

- *Council Implementing Regulation (EU) 2022/876 of 3 June 2022 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine*

- *Council Regulation (EU) 2022/877 of 3 June 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine*

- *Council Regulation (EU) 2022/877 of 3 June 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine*

- *Council Implementing Regulation (EU) 2022/878 of 3 June 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine*

- *Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine*

- *Council Regulation (EU) 2022/880 of 3 June 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine*

- *Commission Recommendation (EU) 2022/867 of 1 June 2022 on the release of emergency oil stocks by Member States following the invasion of Ukraine*

Customs Law

- *Commission Implementing Regulation (EU) 2022/859 of 24 May 2022 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff*

Food Law

- *Commission Implementing Decision (EU) 2022/874 of 1 June 2022 on the terms and conditions of the authorisation of a biocidal product containing N-(trichloromethylthio)phthalimide (Folpet) referred by the Netherlands in accordance with Article 36(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council (notified under document C(2022) 3465) (1)*

- *Commission Regulation (EU) 2022/860 of 1 June 2022 amending Annex III to Regulation (EC) No 1925/2006 of the European Parliament and of the Council as regards monacolins from red yeast rice (1)*

- *Commission Implementing Regulation (EU) 2022/861 of 1 June 2022 laying down exceptional rules for the Member States' second requests for Union aid for school fruit and vegetables and for school milk and derogating from Implementing Regulation (EU) 2017/39 as regards the reallocation of Union aid, for the period from 1 August 2022 to 31 July 2023*

Ignacio Carreño, Joanna Christy, Tobias Dolle, Michelle Limenta, Alya Mahira, Lourdes Medina Perez, Stella Nalwoga, Sean Stacy and Paolo R. Vergano contributed to this issue.

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Boulevard Brand Whitlock 144, 1200 Brussels, Belgium. Telephone: +32 2 648 21 61, Fax: +32 2 646 02 70. www.fratinivergano.eu