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The Trade Perspectives® Team

EU-US negotiations for a *Critical Minerals Agreement*: The latest attempt to secure the EU's industrial competitiveness

On 20 July 2023, the Council of the EU adopted a decision authorising the European Commission (hereinafter, Commission) to open negotiations with the US on a *Critical Minerals Agreement* (hereinafter, CMA), as well as the related negotiating directives. The Agreement seeks to strengthen critical minerals supply chains and mitigate some of the negative repercussions of the US *Inflation Reduction Act* (hereinafter, IRA) on EU industry. According to the Commission, the Agreement aims to “foster EU-US supply chains in critical raw materials needed in the production of electric vehicle batteries” and would grant the EU with “a status equivalent to US free trade agreement partners pursuant to the US Inflation Reduction Act” so that EU companies can qualify for benefits under the IRA. This article examines the EU's reasons to engage in negotiations for the CMA with a view to securing its global competitiveness in a sector of relevance for the green and digital transitions.

The access to critical minerals as an imperative

The relevance of supply chains for critical minerals is demonstrated globally by various actions that have recently been taken by a number of countries with a view to securing access to such raw materials. Critical minerals such as lithium, graphite, and cobalt are essential for the transition to a net-zero and clean economy, as they are key components of, *inter alia*, wind turbines, solar panels, and electric vehicle batteries. The demand for critical minerals is

expected to significantly increase at a global level due to the essential role that critical materials play in the energy and digital transitions.

In recent times, the EU has been working on various fronts in the area of critical minerals, with a view to ensuring safe, steady, and reliable access to such materials, both internally, through legislative initiatives, and externally, through the establishment of cooperation initiatives with key trading partners. The EU-US CMA must be seen in the broader context of the EU's *Net Zero Industry Act*, as well as the *Critical Raw Materials Act*, which aim at scaling up EU manufacturing of key carbon neutral technologies. On 16 March 2023, the European Commission had adopted its Proposal for the *Critical Raw Materials Act*, which contains a set of actions to “ensure the EU's access to a secure, diversified, affordable and sustainable supply of critical raw materials”, as well as its Proposal for the *Net-Zero Industry Act*, which aims at creating “better conditions to set up net-zero projects in Europe and attract investments”. Additionally, Memoranda of Understanding (MoUs) for cooperation on clean energy and critical raw materials were signed with Argentina, Chile, and Uruguay in July 2023, on the side-lines of the *EU-Latin American and Caribbean States (CELAC) Summit* in Brussels. Recent EU preferential trade agreements (hereinafter, PTAs) also include commitments on ‘*Energy and Raw Materials*’ and the Agreement currently under negotiation with Australia is intended to secure additional access, as Australia is the world's largest producer of lithium and has important deposits of other critical minerals, such as cobalt, manganese, and rare earth elements.

The US Inflation Reduction Act and the Clean Vehicle Credit

On 16 August 2022, the US enacted the IRA, which aims at addressing inflation and at investing in US clean energy production. *Inter alia*, the IRA introduced the *Clean Vehicle Credit*, which, according to the [Commission](#), is a “subsidy for the purchase of qualifying battery or fuel cell operated vehicles in the form of a tax credit”. To qualify for the full subsidy, a vehicle must, *inter alia*, be equipped with a battery that has “at least some of its critical mineral content either recycled in North America or extracted and processed in the US or a country with which the US has a Free Trade Agreement”. This limitation to countries “with which the US has a Free Trade Agreement” has led to particular concerns among those US trading partners that do not yet have a trade agreement with the US. On 28 March 2023, shortly after the US had enacted the IRA, the US and Japan [concluded](#) a *Critical Minerals Agreement*, which, most notably, allows critical minerals from Japan to qualify for the IRA's electric vehicle tax credits. The US is the EU's largest trade and investment partner, but, given failed negotiations on the *Transatlantic Trade and Investment Partnership (TTIP)*, no dedicated PTA has been concluded by the EU and the US. In the absence of a comprehensive PTA between the EU and the US, EU goods would not be eligible for the subsidy. Hence, EU-US supply chains would be negatively affected due to EU companies' exclusion from the US tax benefits, reducing EU export competitiveness.

Towards an Agreement on Critical Minerals

Given the clear terms of the IRA, a targeted CMA would aim at enabling critical minerals extracted or processed in the EU to qualify for certain IRA clean vehicle tax credit benefits.

On 10 March 2023, the EU and the US announced their intention to negotiate a CMA. On 14 June 2023, the European Commission had adopted a [Recommendation for a Council Decision](#) and related [negotiating directives](#) for an *EU-US Critical Minerals Agreement*. On 20 July 2023, the Council of the EU adopted a decision providing the negotiating directives for the CMA. Most notably, the CMA is to: 1) “Contain provisions on strengthening international supply chains of critical minerals and related sectors”; 2) “Be fully consistent with World Trade Organization rules and fully in line with the objectives pursued in the *EU Critical Raw Materials Act*, in terms of ensuring the EU's access to a secure and sustainable supply of critical raw materials, and with the *European Battery Alliance*”; 3) “Strengthen the trade in and diversification of international supply chains of critical minerals and promote the adoption of electric vehicle battery technologies by formalising the shared commitment to facilitate trade,

and promote fair competition and market-oriented conditions for trade in critical minerals”; 4) “Promote high levels of environmental protection and protection of workers in the critical minerals sector and encourage corporate social responsibility across critical minerals supply chains”; 5) “Aim to prevent distortive and protectionist practices in critical minerals supply chains”; and 6) “Encourage cooperation on international standards for critical minerals lifecycle assessment, extraction, labelling, recycling and transparency, with a view to supporting sustainable supply chains, and help to prevent future barriers to EU-US trade”.

Spain’s Minister of Industry, Trade and Tourism, *Héctor Gómez Hernández*, speaking on behalf of Spain’s Presidency of the Council of the EU, noted that the CMA would *“be key in diversifying international supply chains of critical minerals”* and that it would *“grant the EU an equivalent status to US free trade agreement partners for the purpose of the Clean Vehicle Credit under the US IRA”*. According to media reports, a Senior US Treasury Official stated that the US was *“well positioned”* to conclude an agreement with the EU *“before the end of 2023”*. In terms of scope, it remains unclear which specific critical minerals would be covered in the EU-US CMA, as the US has proposed the coverage of five critical minerals (*i.e.*, lithium, nickel, cobalt, manganese, and graphite), which are important for the production of batteries, while the US *Inflation Reduction Act* actually covers 50 raw materials. In this regard, on 19 July 2023, during a meeting of the European Parliament’s Committee on International Trade (INTA), a representative from the European Commission noted that the Commission would propose that the CMA cover all 50 critical minerals covered by the IRA.

The EU-US Critical Minerals Agreement and WTO rules

On 3 April 2023, the European Parliament had issued a [*Draft Motion For a Resolution on the opening of negotiations of an agreement with the United States of America on strengthening international supply chains of critical minerals*](#). In its Resolution, the European Parliament welcomed the negotiations of the EU-US Critical Minerals Agreement to *“strengthen international supply chains for critical minerals, to the extent that these negotiations will achieve a balanced result that is compatible with World Trade Organization rules”*. While the EU does state that the CMA *“would grant the EU with a status equivalent to US free trade agreement partners pursuant to the US Inflation Reduction Act”*, it is legally questionable how the EU and the US would be able to provide each other with advantages under a bilateral agreement that is not a preferential trade agreement (hereinafter, PTA) that covers substantially all the trade, as required under WTO rules. The CMA would extend the preferential treatment available to trading partners with which the US has concluded trade agreements to the EU, which would be discriminatory vis-à-vis other US’ trading partners not enjoying such advantages. Indeed, a [*report*](#) by the US *Congressional Research Service* published on 14 April 2023 lists *“WTO Compliance”* as an *“Issue for Congress”*, due to potential questions to be raised by *“some policymakers and other WTO Members”* regarding *“the extent to which a potential US-EU CMA would be consistent with US and EU WTO commitments, given its contemplated limited scope to trade in EV battery critical minerals”*, as well as the fact that *“WTO agreements require that FTAs eliminate duties and other restrictive regulations of commerce on ‘substantially all the trade’ among the parties – something outside the scope of the current CMA negotiations”*.

It should be noted that the US Treasury and the US Internal Revenue Service (hereinafter, IRS) indicated that they might apply an expansive definition of *“free trade agreement”* when determining whether the *“critical mineral requirement”* is met for the new clean vehicle tax credit. In a [*White Paper*](#), the US Treasury and the IRS state that *“the term “free trade agreement” is not defined in the Inflation Reduction Act (or in any other statute). Treasury and the IRS expect to seek comment in the proposed guidance on what criteria should be used to identify free trade agreements for the purposes of the critical minerals requirement and expect to propose that these criteria include whether an agreement reduces or eliminates trade barriers on a preferential basis, commits the parties to refrain from imposing new trade barriers, establishes high-standard disciplines in key areas affecting trade (such as core labor and environmental protections), and/or reduces or eliminates restrictions on exports or commits the parties to refrain from imposing such restrictions, including for the critical minerals*

contained in electric vehicle batteries. Further, Treasury and the IRS expect to propose that the Secretary may identify additional free trade agreements for purposes of the critical minerals requirement going forward and will evaluate any newly negotiated agreements for proposed inclusion during the pendency of the rulemaking process or inclusion after finalization of the rulemaking”.

In the context of WTO scrutiny, also the IRA appears to be in conflict with key WTO disciplines, notably due to the local content requirements and related subsidies provisions. In this context, in 2022 and prior to the adoption of the IRA, the Commission had submitted a formal statement to the US, stressing that tax credits for climate-focused technologies, as well as local-content requirements contained in the Bill, were “*clearly discriminatory*” and in breach of WTO rules.

The next steps

Following the authorisation of the opening of negotiations by the Council of the EU, the Commission can now engage in formal negotiations with the US with a view to concluding an Agreement, possibly before the end of 2023. Once negotiations have been finalised, the CMA will require adoption by the Council of the EU, as well as the European Parliament’s consent.

The EU goes digital: negotiations start with Singapore and Korea on binding digital trade disciplines, while Digital Trade Principles are agreed with Japan

In recent months, the EU has concluded several partnerships to further enhance its digital trade relations with partner countries, particularly those in the Indo-Pacific region. On 27 June 2023, the EU and Japan concluded the *EU-Japan Digital Trade Principles*, which, in simple terms, establish a common understanding for the key issues relevant to digital trade. On the same day, the European Commission (hereinafter, Commission) **announced** that the Council of the EU had adopted the negotiating directives for negotiations on digital trade disciplines with Singapore and the Republic of Korea and, on 20 July 2023, negotiations were already officially launched with Singapore. This article discusses the EU’s recent developments on digital trade, highlights the EU’s move towards binding digital trade commitments, and identifies the implications of these new commitments for businesses and consumers.

The EU’s evolving approach to regulating digital trade

The growing importance of digital trade is reflected in the Commission’s *2021 Communication on An Open, Sustainable and Assertive Trade Policy*, which highlights that the EU needed to “*step up bilateral engagement and explore stronger frameworks for cooperation on trade-related digital issues with like-minded partners*”. As part of this overall approach, the EU has pursued *Digital Partnerships* with its key partners in the Indo-Pacific region, which, in general terms, provide the overarching framework for bilateral cooperation in the digital field. To date, the EU has concluded *Digital Partnerships* with Japan, the Republic of Korea, and Singapore, which were signed in May 2022, November 2022, and February 2023, respectively.

In the context of the *Digital Partnerships*, the EU has concluded *Digital Trade Principles* with Japan, Korea, and Singapore, which are an essential deliverable of the *Digital Partnerships*. The *Digital Trade Principles* are “*non-binding instruments that reflect a common understanding on key issues relevant to digital trade and a joint commitment to an open digital economy, free of unjustified barriers to international trade*” (see *Trade Perspectives, Issue No. 3 of 13 February 2023*). The *Digital Trade Principles* typically cover, *inter alia*, data governance (e.g., free flow of data with trust), digital trade facilitation (e.g., paperless trading and electronic signatures), and business trust (e.g., open internet access and cybersecurity). Building on these general frameworks and non-binding commitments, the EU is now moving towards updating its preferential trade agreements (hereinafter, PTAs) concluded with certain trading partners with additional *Digital Trade Disciplines*.

The *EU-Japan Digital Trade Principles*

Following the *Digital Partnership* concluded with Japan in 2022, the EU and Japan announced the conclusion of the *EU-Japan Digital Trade Principles* on 27 June 2023. A [press release](#) issued by the Commission notes that the *Digital Trade Principles* would provide a common understanding between the EU and Japan on key issues related to digital trade and would cover issues related to data governance, digital trade facilitation, as well as consumer and business trust. In basic terms, the *Digital Trade Principles* indicate both sides' objectives, views, and commitments on various issues of relevance to digital trade. Notably, the EU and Japan: 1) Share the objective of ensuring predictability and legal certainty for businesses engaged in cross-border digital trade; 2) Are committed to the ongoing negotiations under the WTO's [Joint Statement Initiative on electronic commerce](#); and 3) Recognise the need to cooperate and coordinate their approaches on addressing digital protectionist measures.

In general terms, the *EU-Japan Digital Trade Principles* are less comprehensive in scope and less detailed compared to the EU's *Digital Trade Principles* concluded with Singapore and the Republic and Korea, which contain dedicated sections governing various digital trade disciplines and related key aspects. The *EU-Japan Digital Trade Principles* only recall and reaffirm the importance of certain digital trade aspects in the preamble, but do not include provisions on certain issues, such as on source code and electronic contracts.

Negotiations on binding rules with Singapore and the Republic of Korea

While the EU's *Digital Partnerships* and *Digital Trade Principles* are an essential step forward to developing common regulatory approaches on digital trade, they remain non-binding. In order to complement these instruments, the EU is now pursuing binding commitments on digital trade, which are intended to 'modernise' the rules on electronic commerce in the preferential trade agreements (hereinafter, PTAs) concluded with Japan, the Republic of Korea, and Singapore. Initially, the EU's PTAs contained only limited commitments on electronic commerce, but, in recent years, the EU has moved from such limited commitments to more ambitious chapters on 'Digital Trade', *inter alia*, contained in the agreements with Chile, New Zealand, and the UK. The inclusion of broader provisions on digital trade is now considered necessary, with the Commission noting that international trade rules "*do not always take account of the specific nature of digital trade*". The core elements of the EU's approach to digital trade include commitments on data flows, the prohibition of data localisation requirements, rules on consumer protection, as well as on the protection of software source code. Therefore, earlier agreements are now to be updated with binding disciplines.

On 14 April 2023, the Commission adopted a [Recommendation for a Council Decision authorising the opening of negotiations for digital trade disciplines with the Republic of Korea and with Singapore](#). The Recommendation highlights that, while bilateral trade between the EU and Singapore and the Republic of Korea "*have already been liberalised and enhanced by the Free Trade Agreements (FTAs) concluded between the EU and the Republic of Korea in 2011 and between the EU and Singapore in 2019*", they do not yet provide comprehensive rules on digital trade. Negotiating digital trade rules with Singapore and with the Republic of Korea are intended to create new opportunities for EU businesses and consumers by facilitating "*the operation of EU businesses in those countries, notably for micro, small and medium enterprises*", and by strengthening "*the EU consumer's trust in the online environment*".

On 27 June 2023, the Council of the EU approved the Commission's mandate for digital trade negotiations with the Republic of Korea and Singapore, enabling the Commission to swiftly start negotiations with both countries. Already on 20 July 2023, European Commission Executive Vice-President and European Commissioner for Trade, [Valdis Dombrovskis](#), and Singapore's Minister for Trade and Industry, [Gan Kim Yong](#), issued a [Joint Statement](#) marking the official launch of negotiations for an *EU-Singapore Digital Trade Agreement*. The EU and Singapore "*intend to negotiate an ambitious and modern digital trade agreement*", which would deepen and complement the [EU-Singapore Free Trade Agreement](#). On 1 February 2023,

during the first meeting of the EU-Singapore Digital Partnership Council, Singapore's Minister of Industry and Trade, *S Iswaran*, had indicated that both sides had agreed to work on issues related e-identification, artificial intelligence governance, and on providing assistance to small and medium enterprises, which could be reflected in the *EU-Singapore Digital Trade Agreement*. The EU and Singapore have tasked their negotiating teams to “*follow up swiftly on the first negotiation round*”.

A closer look at the European Commission's negotiation directives

In accordance with the Council of the EU's [negotiating directives](#), the *Digital Trade Disciplines* to be negotiated between the EU and Singapore and the Republic of Korea, respectively, “*should be consistent with the rules set out in these FTAs [EU-Singapore and EU-Republic of Korea]*” and will “*build on the high level of convergence on digital trade issues reflected in the Digital Trade Principles*”. The negotiating directives’ “*proposed content*” does not limit the scope of the digital rules and commitments, noting that the negotiations may cover “*any aspect of digital trade agreed by the parties*”. However, the negotiating directives provide a list of ten aspects of digital trade that may be negotiated, including: Facilitation of electronic transactions; Consumer trust; Cross-border data flows with trust; Trade facilitation measures for electronic commerce; Electronic commerce-related aspects of intellectual property rights; and Transparency. These aspects reflect the EU's digital trade provisions contained in the agreements concluded with Chile, New Zealand, and the UK, although the coverage always differs depending on the parties' respective interests and negotiations. In its Recommendation for the negotiation directives, the Commission confirmed that “*the intended disciplines for the negotiations are very similar to those already included in the FTAs concluded between the EU and the United Kingdom, between the EU and Chile and between the EU and New Zealand, and also those pursued by the EU in the plurilateral digital trade negotiations in the WTO*”.

Essentially, the negotiating directives state that any commitment by the EU “*should be in line with the EU legal framework and should preserve the regulatory autonomy required to implement and develop the EU data and digital policies*”. Nonetheless, the negotiating directives provide for several guiding principles, notably: 1) The EU must not agree to commitments that could affect its legal framework on cybersecurity; 2) The approach on data flows “*has to be coherent with the approach followed in this regard in concluded and, where relevant and as appropriate, recent and ongoing negotiations for bilateral and multilateral trade and investment agreements*” and “*the negotiations should result in rules covering cross-border data flows addressing unjustified data localisation requirements, while neither negotiating nor affecting the EU's personal data protection rules and should, notably be in line with the EU legal framework on the protection of personal and non-personal data*”; 3) The EU and its Member States must “*maintain the possibility to preserve and develop their capacity to define and implement cultural and audio-visual policies*”; 4) The EU must not agree to commitments that could affect its legal framework on the protection of intellectual property rights; and 5) The rules should not prevent the EU and its Member States to achieve “*legitimate public policy objectives*”, such consumer protection.

Benefits of the future commitments?

Most notably, binding digital trade commitments building on the EU's PTAs with Singapore and the Republic of Korea would allow businesses to, *inter alia*: benefit from the elimination of unjustified barriers to digital trade, such as data localisation requirements; transfer data freely, enabling them to provide new service supply models; operate in a secure online environment that builds on strong consumer and data protection; and, more generally, take advantage of expanding commercial opportunities. In the long run, these commitments could harmonise the EU's and partner countries' regulatory priorities and approaches to governing digital trade, which would deliver important trade facilitation benefits.

Within the EU renewal procedure for the herbicide glyphosate, the European Food Safety Authority concludes that there are no “critical areas of concern”

On 6 July 2023, the European Food Safety Authority (hereinafter, EFSA) published the result of its long-awaited [assessment](#) on the herbicide glyphosate, concluding that there are “no critical areas of concern” of glyphosate, although the EFSA also said that data gaps did not allow conclusions on certain aspects. The EFSA’s assessment is an important step in the EU’s regulatory process on whether the current approval of glyphosate as an active substance in plant protection products should be renewed. Glyphosate is the most widely used herbicide as an active substance in plant protection. The question of its renewal has been highly controversial as views diverge over glyphosate’s impact on health and the environment.

The herbicide glyphosate and the controversy surrounding it

Glyphosate is an active ingredient patented in the early 1970s and widely used in herbicides. Glyphosate-containing herbicides were introduced to the consumer market in 1974 as broad-spectrum herbicides and quickly became best sellers (in particular, *Monsanto’s RoundUp*). Since the patent expired in 2000, glyphosate-containing herbicides have been marketed by various companies and several hundred plant protection products containing glyphosate are currently registered in Europe for use on crops. Glyphosate-containing herbicides are applied to the leaves of plants to eradicate both broadleaf plants and grasses. For example, glyphosate may be used to kill weeds in a field before a crop is sown, before it germinates, or after it has been harvested. Glyphosate-containing products are also sprayed onto crops before they are harvested to make them dry out, or to make them easier to harvest (a practice referred to as desiccation). Glyphosate is used as a desiccant on cereals, oilseed rape, maize, and sunflowers. Other approved uses for glyphosate-based herbicides in the EU include weed control in vineyards, olive groves, and fruit orchards. Glyphosate is also used on grass pastures, in forestry, in urban and garden applications, and for clearing railway lines. It should be noted that there are glyphosate-tolerant GM crops, which permit its use (where authorised) on wide areas of land.

Part B of the Annex to [Commission Implementing Regulation \(EU\) No 540/2011 of 25 May 2011 implementing Regulation \(EC\) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances](#) sets out the active substances that have been approved under [Regulation \(EC\) No 1107/2009](#). The approval of the active substance glyphosate expired on 15 December 2022. An application for the renewal of the approval of that substance was submitted pursuant to Article 1 of the then applicable [Commission Implementing Regulation \(EU\) No 844/2012 setting out the provisions necessary for the implementation of the renewal procedure for active substances, as provided for in Regulation \(EC\) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market](#) on 12 December 2019.

Already in December 2013, the German Federal Institute for Risk Assessment (*Bundesinstitut für Risikobewertung*, BfR) had proposed to classify glyphosate as ‘non-carcinogenic’. The EFSA then concluded in November 2015 that glyphosate is “probably not genotoxic” (i.e., DNA damaging), nor does it represent a carcinogenic threat to humans and, therefore, recommended that glyphosate not be classified as carcinogenic. In particular, experts from the EU Member States, with the exception of Sweden, agreed that neither the epidemiological data (i.e., those with respect to humans), nor the evidence from animal studies, showed a causal association between glyphosate exposure and cancer in humans. On request of the European Commission, the EFSA also reviewed a [report](#) of March 2015 of the International Agency for Research on Cancer (IARC), an agency of the World Health Organization (WHO), which classified glyphosate as “probably carcinogenic to humans” and created some controversy (see [Trade Perspectives, Issue No. 7 of 8 April 2016](#)). Both the EFSA and the IARC are blamed for disregarding studies and being opaque as to the origin of scientific findings included in their respective reports.

The EFSA's new assessment

In its new assessment of the impact of glyphosate on the health of humans, animals, and the environment, published on 6 July 2023, the “*EFSA did not identify any critical areas of concern in its peer review of the risk assessment of the active substance glyphosate in relation to the risk it poses to humans and animals or the environment*”. According to the EFSA, a concern is defined as “*critical*” when it affects all proposed uses of the active substance under evaluation (e.g., pre-sowing uses, post-harvest uses etc.), thus preventing its approval or renewal. The EFSA has shared the peer review of the risk assessment for glyphosate with the European Commission and EU Member States. Following the assessment by the EFSA, the European Commission and EU Member States are expected to decide on the renewal of the approval of glyphosate. The EFSA stated that the conclusions of the assessment would be published by the end of July 2023, while the background documents are expected to be published between the end of August and the middle of October 2023.

The current approval for the herbicide glyphosate

On 2 December 2022, the European Commission decided to extend the current approval for glyphosate for one year until 15 December 2023 through [Commission Implementing Regulation \(EU\) 2022/2364 of 2 December 2022 amending Implementing Regulation \(EU\) No 540/2011 as regards the extension of the approval period of the active substance glyphosate](#). The extension had become necessary due to the EFSA's inability to finish its reassessment in time, which was originally supposed to be concluded in May 2022. During the public consultation on the initial draft Renewal Assessment Report on glyphosate, a very high number of comments were submitted to the EFSA. Furthermore, on 14 March 2022, the EFSA requested a significant amount of additional information from the applicant, which was submitted in due time. In addition, the EFSA identified a very high number of points to be discussed by experts during the peer review.

The extension of the approval was adopted under [Regulation \(EC\) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC](#), and in particular Article 17(1), thereof, on the ‘*Extension of approval period for the duration of the procedure*’, which states that “*Where for reasons beyond the control of the applicant it appears that the approval is likely to expire before a decision has been taken on renewal, a decision shall be adopted [...], postponing the expiry of the approval period for that applicant for a period sufficient to examine the application*”.

On 15 December 2023, the current approval of glyphosate will expire. Article 20 of [Regulation \(EC\) No 1107/2009](#) concerns the ‘*Renewal Regulation*’, which is to be adopted in accordance with the regulatory procedure involving the EU Member States gathered in the Standing Committee on Plants, Animals, Food and Feed, providing that: “*(a) the approval of an active substance is renewed, subject to conditions and restrictions where appropriate; or (b) the approval of an active substance is not renewed*”. There is no scrutiny by the European Parliament concerning the Renewal Regulations, including for glyphosate.

On 11 and 12 July 2023, the Commission held an exchange of views on the EFSA's conclusions regarding the renewal of glyphosate with EU Member States' representatives within the Standing Committee on Plant, Animal, Food and Feed (SCOPAFF), section Phytopharmaceuticals. This marked the start of the process to grant the herbicide a new EU approval before the current one expires in December 2023. Reportedly, national representatives would resume discussions on whether or not to reauthorise glyphosate in September and a vote is expected on 12 or 13 October 2023. According to Article 12(2) of [Regulation \(EC\) No 1107/2009](#), “*the renewal of the approval shall be for a period not exceeding 15 years*”.

Data gaps in the assessment of glyphosate

Where data gaps in the assessment of glyphosate were identified, these are reported in the EFSA's conclusions as either issues that could not be finalised or outstanding issues. Issues that could not be finalised include *“the assessment of one of the impurities in glyphosate, the consumer dietary risk assessment, and the assessment of risks to aquatic plants”*. Outstanding issues include, among others, a *“lack of information about the toxicity of one of the components present in the glyphosate-based pesticide formulation submitted for evaluation, which is needed to conclude the risk assessment of the formulation for representative uses. For this formulation there were no indications of acute toxicity and genotoxicity”*. On biodiversity, the EFSA recognised that the *“risks associated with the representative uses of glyphosate are complex and depend on multiple factors”*. Regarding ecotoxicology, the adverse impacts of substances, particularly chemicals, in relation to the environment and public health, the EFSA notes that the available data *“allowed a conservative risk assessment approach, which identified a high long-term risk to mammals in 12 out of 23 proposed uses of glyphosate”*.

Regarding the transparency of the process, the Head of the EFSA's Risk Assessment Production Department, *Guilhem de Seze*, stated that *“the risk assessment and peer review of glyphosate represents the work of dozens of scientists from EFSA and the Member States in a process that has spanned over three years. It is based on an evaluation of many thousands of studies and scientific articles, and also incorporates valuable input gathered during the public consultation”*.

While the EFSA concludes that there are *“no critical areas of concern”* for glyphosate, the EFSA also notes that data gaps did not allow conclusions on certain aspects. These data gaps concern matters like risks to aquatic plants and toxicity, which do not appear to be irrelevant for the process of renewal of glyphosate.

Conclusion and outlook

The EFSA's assessment comes after the European Chemicals Agency (ECHA) [concluded](#) in May 2022 that glyphosate cannot be classed as carcinogenic. Both agencies' assessments are set to inform the European Commission's decision on whether to reapprove the substance. The adoption by the European Commission of a Regulation providing that the approval of glyphosate is renewed or not renewed must be science-based. However, a new approval for glyphosate is poised to be controversial.

Recently adopted EU legislation

Trade Law

- [Council Decision \(EU\) 2023/1477 of 14 July 2023 on the signing, on behalf of the Union, of the Agreement in the form of an Exchange of Letters between the European Union and the People's Republic of China pursuant to Article XXVIII of the General Agreement on Tariffs and Trade \(GATT\) 1994 relating to the modification of concessions on all the tariff rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union](#)
- [Council Regulation \(Euratom\) 2023/1479 of 14 July 2023 laying down rules for the exercise of the Community's rights in the implementation of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#)
- [Decision No 2/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 3 July 2023](#)

adding two newly adopted Union acts to Annex 2 to the Windsor Framework (2023/1522)

- *Regulation (EU) 2023/1524 of the European Parliament and of the Council of 20 July 2023 on temporary trade-liberalisation measures supplementing trade concessions applicable to products from the Republic of Moldova under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part*
- *Council Decision (EU) 2023/1560 of 20 July 2023 authorising the opening of negotiations with the United States of America for an agreement on strengthening supply chains for critical minerals*

Food Law

- *Commission Implementing Regulation (EU) 2023/1463 of 10 July 2023 approving a modification of traditional terms in the wine sector in accordance with Article 115(2) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council ('Landwein', 'Qualitätswein', 'Kabinett/Kabinettwein', 'Spätlese/Spätlesewein', 'Auslese/Auslesewein', 'Strohwein', 'Schilfwein', 'Eiswein', 'Ausbruch/Ausbruchwein', 'Trockenberenauslese', 'Beerenauslese/Beerenauslesewein')*
- *Commission Regulation (EU) 2023/1510 of 20 July 2023 amending Regulation (EU) 2023/915 as regards maximum levels of cadmium in tiger nuts and certain cultivated fungi*
- *Commission Implementing Regulation (EU) 2023/1511 of 20 July 2023 amending Implementing Regulations (EU) 2018/2019 and (EU) 2020/1213 as regards certain plants for planting of *Malus sylvestris* originating in the United Kingdom*
- *Commission Regulation (EU) 2023/1536 of 25 July 2023 amending Annex III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for nicotine in or on certain products*

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