

## frESH Law Horizons

November 2020



### **Office for Product Safety and Standards (OPSS) issues guidance on the end of the**

**Brexit transition.** The OPSS [guidance](#) covers sector-specific product safety regulations, such as those applying to cosmetics, electrical and electronic products, toys and personal protective equipment, as well as those applying to general products (governed by the General Product Safety Regulations 2005). The guidance covers obligations of manufacturers, importers and distributors when placing products on the market in Great Britain (**GB**). It also makes clear that the importer can, in the short term, ensure traceability by a means other than including their name and address on the product label (e.g. by ensuring there is an importer address in shipping documents, the invoice and/or the outer packaging). However, these options may not be used after 31 December 2022. There is separate guidance available for products to be sold in [Northern Ireland](#), to reflect the fact that in Northern Ireland, as a result of the Protocol agreement reached with the EU, goods will still be required to comply with EU product laws.

### **Court of Appeal rules multiple aspects of wrongdoing are an aggravating factor.**

In [R \(on the application of the Environment Agency\) v Lawrence \[2020\] EWCA Crim 1465](#), the Court of Appeal considered the application of the [Sentencing Council's Definitive Guideline on Environmental Offences](#) by the judge in the prosecution of a director of a skip company (the defendant having pleaded guilty to a number of offences under environmental permitting and environment protection legislation). The applicant for appeal argued that the sentence of the judge was manifestly excessive, in circumstances where at step three of the guidelines, although the offence was at the top of Category 2 harm, he had determined that the fact that there were multiple failings were aggravating features such as to move the "harm level" into Category 1. The Court of Appeal dismissed the appeal, saying that the applicant's "very high level of recklessness together with the large number of features of harm and aggravation, tempered by his personal mitigation and his very late pleas, mean that this sentence cannot be described in any way as either manifestly excessive or wrong in principle. Indeed, to the contrary we can envisage that some judges, bearing in mind the utmost importance of protecting the environment, might not have suspended the sentence." A similar argument could, of course, be made in relation to the sentencing of organisations. Moving up a harm category effectively doubles the starting point for a fine under the Sentencing Guidelines, so a move up from Category 2 to Category 1 will always be significant.

### **Health & Safety Executive (HSE) is checking transport businesses for COVID-19 security.**

The HSE [press release](#) indicates that it will work with local authorities to inspect businesses in the transport and logistics sector, including warehouses and distribution centres, and will check that businesses have suitable toilet and handwashing facilities for all workers, including visiting drivers. The HSE website has [guidance](#) on handwashing and hygiene, and suggests the provision of handwashing facilities with running water, soap and paper towels or hand dryers; hand sanitiser at locations in addition to washrooms; and hands sanitiser nearby for people getting in and out of vehicles or handling deliveries, if they are unable to wash their hands.

### **Court of Appeal decides that COVID-19 concerns did not render a conviction unsafe.**

In [R v GP \[2020\] EWCA Crim 1056](#), the only ground of appeal (against offences relating to indecent assault) was that the jury felt under pressure to return a verdict quickly. The trial was in March 2020 and concluded on the last working day before lockdown. The Court of Appeal said that if counsel were concerned that the jury should not have retired to consider their verdicts on Friday 20 March because of the risk of time pressure owing to the developing public health crisis, they should have invited a discharge of the jury. The jury had a full day of deliberations available to them and plainly analysed the evidence carefully because they returned mixed verdicts.



**Sentences for directors and senior management.** There have been a number of sentences reported this month for individuals involved in the management of organisations where there have been health and safety breaches. Cases have included a [director sentenced for failing to comply with height regulations](#), due to the reported “wilful neglect” of the director of relevant requirements (sentenced to eight months’ imprisonment, suspended for two years); a [managing director who received a suspended sentence](#) for alleged failure to take reasonably practicable precautions for the decommissioning of a petrol tank, which resulted in an explosion (and an order to pay more than £8,000 in costs); and a [company director and project manager sentenced](#) to suspended custodial sentences for health and safety breaches at a construction site (again with orders to pay costs, amounting to £20,000 for the director). These cases are a reminder that the HSE can and does prosecute individuals, as well as companies, for breaches where it considers it appropriate.

**Law Commission announces a review of corporate criminal liability.** The [announcement](#) indicates that the commission will draft an Options Paper, in which the commission will analyse how effective the law is and where it could be improved. The commission will present various options for reforming the law so that corporate entities can be held appropriately to account, following the mixed success of recent prosecutions for economic crime.

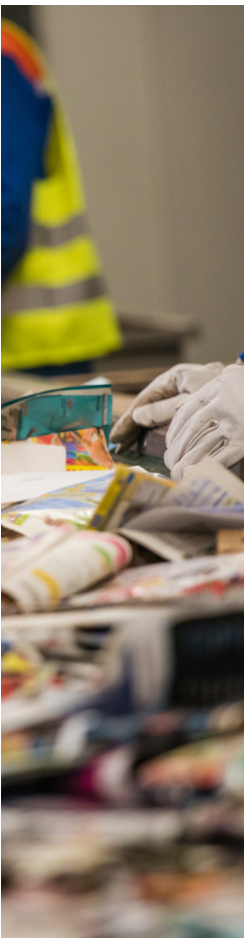
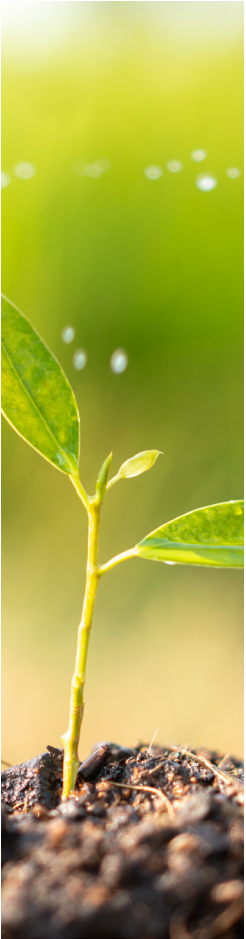
**Analysis of recall trends is published.** Stericycle has published its most recent [recall report](#), covering various sectors (including automotive, medical devices, food and drink, pharmaceutical, electronics, clothing and toys). As a general trend, the report highlights the fall in recalls in most sectors in 2020. However, for food and beverage, the report notes that the “green lanes” introduced to allow the supply chain to meet demand during the pandemic, with a free circulation of goods, has led to spikes in the recall data tables across the continent in the last quarter. Pharmaceutical recalls have also risen in the last quarter. Stericycle predicts a rise in recalls of UV sterilisers (portable products that use UV light to sterilise surfaces) in coming months: Q3 2020 saw six instances of steriliser recalls – the first time it has appeared on recall lists this year as sales rise and the public emerge from lockdown.

**HSE releases annual injury and ill-health statistics.** The [statistics](#), for GB, show the lowest number of deaths on record. However, the HSE [press release](#) highlights that more than half of the working days lost in 2019/2020 were due to mental ill-health.

**The Competition and Markets Authority (CMA) is to [examine if “eco-friendly” claims are misleading](#).** The CMA will investigate descriptions and labels used to promote products and services claiming to be “eco-friendly”; and whether they could mislead consumers. CMA is concerned that a surge in demand for “green” products and services could incentivise some businesses to make misleading, vague or false claims about the sustainability or environmental impact of their products (often called greenwashing). CMA intends to publish guidance for businesses in the summer of 2021 to help them support the transition to a low-carbon economy without misleading consumers.

**There are conflicting views on the fate of 19 potential EU infraction proceedings against the UK.** Environment Minister George Eustice reportedly commented that any “infraction proceeding the EU brings will fall away since the European Court of Justice will no longer have jurisdiction from the end of December.” However, in a [letter to Greener UK](#), the European Commission said that after the end of the transition period, it would continue to be “competent for administrative procedures which were initiated before the end of the transition period concerning compliance by the UK with Union law and the Court of Justice will continue to have jurisdiction over such cases.” It also referenced the ability, within the following four-year period, to bring cases before the Court of Justice for infringements of EU law that occurred in the period before the end of the transition period. There are 19 potential infraction proceedings against the UK that are being investigated by the commission, covering a wide range of different environmental legislation. The Department for Food and Rural Affairs (DEFRA) subsequently confirmed the commission’s position to be correct, but it remains to be seen whether, in practice, the EU will consider it worthwhile or beneficial to pursue such matters, and whether they simply fall away if not taken up (and whether the Office for Environmental Protection (OEP) would investigate such matters further).





**Government announces its ten-point plan for a “Green Industrial Revolution”.** Boris Johnson [announced](#) his ten-point plan for a green recovery, with the stated aim being to “create, support and protect hundreds of thousands of green jobs, while making strides towards net zero by 2050.” This was followed by a [public policy document](#) providing further detail on the Green Industrial Revolution and how it will turn the UK into the world’s number one centre for green technology and finance. Key points outlined are ambitious policies to mobilise £12 billion of public sector investment and drive an estimated £42 billion of private sector investments by 2030 across energy, buildings, transport and innovative sectors; a 40GW pipeline of offshore wind by 2030, supporting 60,000 jobs; targeting 5GW of low-carbon hydrogen production by 2030; targeting new, advanced nuclear power, with the establishment of a £385 million Advanced Nuclear Fund; ambitions for 10Mt of carbon capture, usage and storage (CCUS) a year by 2030; the first UK sovereign Green Bond in 2021 of £1 billion, with £1 billion of matched funding and potentially up to £2.5 billion of private sector funding; and phasing out sales of new petrol and diesel cars and vans by 2030 to accelerate the transition to electric vehicles. For further details and discussions of the plan, please see this [briefing](#). We also hosted a webinar on the Future of Green Energy, featuring The Rt. Hon. Kwasi Kwarteng and leading business stakeholders, which discussed the ten-point plan and other issues. The webinar has been [summarised](#) and [recorded](#). Following these announcements, the Department for Business, Energy and Industrial Strategy (**BEIS**) has announced that it is recruiting for a new directorate to manage an £800 million investment programme in CCUS technology, and Chancellor Rishi Sunak’s [spending review](#) set out how the government intends to deliver £100 billion of capital expenditure in roads, rail, housing, schools and hospitals, supported by a [national infrastructure strategy](#) and a national infrastructure bank.

**UK water industry sets out its [Net Zero 2030 Routemap](#).** Water UK, which represents the UK water industry, has “unveiled a ground-breaking plan to deliver a net zero water supply for customers by 2030 in the world’s first sector-wide commitment of its kind.” The plan sets out six commitments alongside four recommendations for others. They are intended to create accountability, reduce the costs and risks of transition, and create new benefits, such as restored habitats. The plan follows a “public interest commitment” to achieve net-zero by 2030 from the water companies in 2019, and this plan reconfirms the commitment and explains how they will get there. This is understood to be the first “whole-sector, voluntary endeavour to reach such a demanding target.” By joining forces in this way, Water UK estimates that up to 10 million tonnes of greenhouse gas could be saved by reaching net-zero 20 years ahead of the UK government’s 2050 target.

**Environment Agency (EA) [warns companies to check waste management practices in light of contaminated waste plastic exports](#).** The EA has intercepted increasing amounts of contaminated plastic waste bound for illegal export, and is warning farmers, agricultural businesses and waste companies, in particular, to check their waste management processes or face enforcement action. Contaminated waste plastics, such as silage wrap, have been found in numerous consignments being exported. These materials cannot be exported under the “green list” procedure, but require notification to, and consent from, the country of despatch, the destination country and any additional countries through which it will transit.

**The High Court has dismissed a judicial review against the EA regarding the definition of waste.** In [Safety-Kleen UK Ltd v The Environment Agency](#), Safety Kleen (SK) challenged a decision of the EA on the waste status of used kerosene that it collected from its customers. The kerosene is used in SK’s specialist parts washing equipment, and needs to be renewed periodically. SK would collect the used kerosene when it replaced it in the machines, and used it at its own depot to rinse out dirty drums, before then sending it to a specialist company for recovery. SK argued that the kerosene did not become waste until SK sent it for recovery, but the EA determined that it became waste when collected from the customer’s premises, and remained as such. This has significant impacts for how the kerosene would have to be regulated, and associated costs. In dismissing the case, the judge acknowledged that SK made a beneficial use of the used kerosene, and that it had a commercial value, but “it is received as waste and remains waste, notwithstanding the intended beneficial use of it by [SK], which receives it upon discard.” This is a difficult area of law and there have been other similar cases in past years (about waste oils).



**Environment Bill is unlikely to become law until the summer of 2021.** This also means that the OEP will not be fully established until then, and so is unlikely to be fully functional until the autumn. The bill is unlikely now to receive royal assent in 2020 and the timetable going forward suggests it will not be in force as legislation until July. The bill has now completed the House of Commons committee stage (discussed further below), and now moves to the report stage, a date for which is yet to be set. In the interim, the chair of the OEP (who should be appointed imminently after a recruitment campaign several months ago) will have a “shadow secretariat”, sitting within DEFRA, and will start work on the strategy and appointment of other board members.

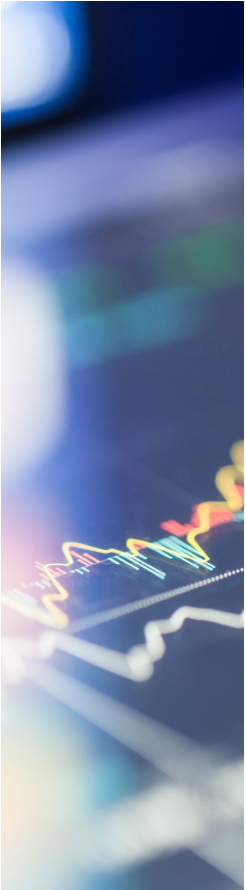
**Environment Bill amendment is proposed during the House of Commons committee stage.** Numerous amendments were proposed, by the government and by others. These include a government proposal to enable the OEP to bring judicial review proceedings against public bodies, without first going through notice stages, in “urgent cases”, and amendments to confirm that environmental reviews would be heard in the High Court. The government has also reduced the number of environmental principles in the bill to five, but has conceded that ministers must have “due regard” to them (rather than just “regard”), and has sought to clarify the respective remits of the OEP and the Climate Change Committee. An opposition amendment, rejected by the government, would have seen the OEP gain powers to levy fines against public authorities if they did not properly apply environmental law. We have also learned that the binding targets for air quality, nature, water and resource and waste efficiency will not become law until October 2022, following a public consultation. New clauses in the bill also address the prevention of illegal deforestation in the UK supply chain (which require large organisations to implement a due diligence system), following a consultation in August 2020. Finally, the government’s independent Air Quality Expert Group (AQEG) launched a call for evidence on modelling fine particulate matter (PM2.5) concentrations in England, to inform the new legally binding air quality targets that will be made under the bill.



**New packaging recycling targets for England for 2021-22 do not include energy recovery.** The [Producer Responsibility Obligations \(Packaging Waste\) \(Amendment\) \(England\) Regulations 2020](#) come into force on 1 January 2021 and vary the targets for recycling packaging waste for 2021 and 2022. The focus going forward is on recycling targets and no further recovery targets are being set. This means that activities that are lower on the waste hierarchy than recycling, such as energy from waste recovery processes, could not be able to issue packaging recovery notes (PRNs) from 2021. These changes are in line with the proposals in the [consultation in February 2019](#) on reform of the packaging waste system. Similar changes are being made in Wales, Scotland and Northern Ireland.

**HM Revenue & Customs (HMRC) publishes draft legislation and a consultation response on plastic packaging tax.** HMRC confirmed its proposal to introduce a tax on the production and import of plastic packaging with less than 30% recycled content, from April 2022. Only minor changes have been made to the policy design as set out in the March 2020 consultation. The documents now published are a [consultation response](#), summarising the responses to the consultation and the governments’ position on these points, [draft legislation](#) (with explanatory notes) and a [policy paper](#) explaining the tax. A number of technical issues, such as the definition of plastic, and how to measure recycled content, still need to be further clarified and explained, through guidance and secondary legislation.

**UK government confirms its support for a new global treaty to address plastic pollution.** Speaking at an online World Trade Organisation event, Environment Minister [Zac Goldsmith announced](#) the UK government’s support for such a treaty. It is not yet clear when or under which framework such a treaty would be negotiated, but it has been described as the “Paris agreement on plastics”, and is certainly another area of potential plastic regulation to keep under review.



**The UK will become the first country in the world to make Taskforce on Climate-related Financial Disclosures (TCFD) aligned disclosures fully mandatory across the economy by 2025.**

In the 2019 Green Finance Strategy, the government established a taskforce to explore the most effective approach to implementing the recommendations of the TCFD. This strategy included an expectation that all UK listed issuers and large asset owners would be making disclosures in accordance with the TCFD's recommendations by 2022, and stated that the government would consider the case for mandatory TCFD-aligned disclosures. Sectoral consultations have followed, such as in relation to premium listed companies and pension funds, but Chancellor Rishi Sunak [announced](#) on 9 November that the UK will become the first country in the world to make TCFD-aligned disclosures fully mandatory across the economy by 2025, going beyond the "comply or explain" approach. The [UK Taskforce's Interim Report](#), which includes a detailed roadmap, sets out an indicative pathway to achieve that over the next five years. It anticipates that a significant part of the mandatory requirements will already be in place by 2023. The roadmap splits the strategy into different types of organisation: listed commercial companies; UK-registered companies; banks and building societies; insurance companies; asset managers; life insurers and FCA-regulated pension schemes; and occupational pension schemes. Different regulators and legal regimes will give effect to the reporting requirements for different types of organisation. There will be a consultation on new Companies Act 2006 reporting requirements in early 2021, with regulations coming into force in 2022. It is not yet clear exactly which companies will be affected, but it is likely to apply to very large UK private registered companies and listed or publicly quoted companies that are classed as a medium-sized company or larger. TCFD also recently published its 2020 status [report](#), which shows a more than 85% increase in support by companies for TCFD, since the 2019 equivalent report.

**The Financial Reporting Council (FRC) publishes a [climate thematic report](#).** Throughout 2020, the FRC has undertaken a thematic review of climate-related considerations by boards, companies, auditors, professional bodies and investors. This report forms part of that review and summarises all of FRC's findings. Overall, the report concludes that all of these entities need to do more to consider and integrate climate-related issues into reporting, auditing and decision-making. The FRC also outlines its expectations in relation to climate-related information in narrative reporting and financial statements.

**The application window opens for UK quotas of hydrofluorocarbons (HFC) and ozone-depleting substances (ODS).**

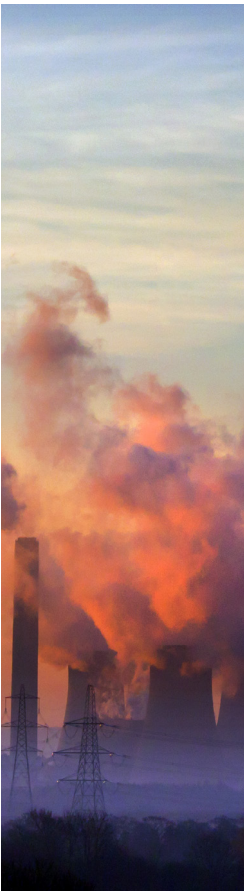
At the end of the Brexit transitional period on 31 December, GB will leave the EU quota system for HFC and ODS, and this is replaced by a GB system. The application window for GB quotas is now open, and closes on 15 January 2021. Companies wishing to place HFCs or ODSs on the GB market in 2021 will need to apply for a quota before this date. Note that an EU quota will still be required for placing on the market in Northern Ireland. DEFRA has also updated its [guidance](#).

**Government publishes a further update on greenhouse gas emissions trading from January 2021.**

BEIS has updated its [guidance](#) to include details on compliance by UK operators with EU Emissions Trading System (EU ETS) reporting and verification requirements relating to 2020. The UK will cease its participation in EU ETS on 31 December 2020 and has indicated that it will be replaced by a UK scheme, if a link to the EU ETS can be agreed, or if not, then a carbon tax. The government has now published The [Greenhouse Gas Emissions Trading Scheme Order 2020](#), which establishes the framework for the UK Emissions Trading Scheme (UK ETS), including its scope, regulators, reporting and monitoring requirements and emissions cap. It remains to be seen whether the necessary link to the EU ETS will be agreed, and the fall-back position remains a carbon emissions tax.

**The House of Lords Library published a [briefing note on vehicle type approval and carbon dioxide emissions](#).**

This is a useful summary and briefing on a complex area of regulation. It explains three Brexit-related statutory instruments, recently debated in the House of Lords, which convert the current EU regulations into UK law, to establish a new standalone regime in GB and ensure that the UK meets its obligations under the Northern Ireland Protocol.





**The EA has published new guidance for chemical waste facilities.** The guidance on [Chemical waste: appropriate measures for permitted facilities](#) explains the standards (appropriate measures) that are relevant to regulated facilities with an environmental permit to treat or transfer chemical waste. The EA has also updated its main [Technical guidance for regulated industry sectors: environmental permitting](#) to link to the new guidance for this sector.

**The National Audit Office (NAO) published its report, [Achieving government's long-term environmental goals](#).** The report examines how the government is placed to deliver its long-term environmental goals, including under the 25-year plan for the natural environment. NAO concludes that "there is still a long way to go before government can be confident that it has the right framework to deliver on its aspirations and ensure value for money from the funding it has committed to environmental projects." Even recognising that COVID-19 may have slowed momentum, NAO states that progress was already slower than intended. The NAO recommends that, when the government sets its Environment Bill targets, these should include measurable outcomes for both the medium term (2030) and long term (2040). It concludes that "government needs to pick up the pace if it is to improve the natural environment within a generation."

**The Ministry of Housing, Communities and Local Government (MHCLG) published the provisionally confirmed [Hazardous Substances \(Planning\) Common Framework Agreement](#).** This framework is intended to ensure coordination and consistency between the approaches in England and the devolved administrations on hazardous substances planning after the Brexit transition period. This is particularly necessary because the overarching framework of the Seveso Directive will no longer constrain the ability of the GB nations to make changes to the regime, which could lead to differences in requirements in different areas. The provisional framework has been submitted to Parliament for approval. This is distinct from the control of major accident hazards (COMAH) regime, which has an existing memorandum of understanding between the devolved administrations and the COMAH competent authorities, although this is in the process of being updated to reflect the situation after the Brexit transition period.

**Environmental Audit Committee (EAC) published its [Report on Electronic Waste and the Circular Economy](#).** This follows a detailed inquiry on these issues. The report highlights the increase in electronic and electrical consumer equipment leading to increasing amounts of electronic waste. The UK generates the second-highest amount of such waste in the world, but we are not collecting and treating much of this waste properly, which often ends up in landfill or being exported. To tackle this large and growing problem, the EAC is calling on the government to take numerous actions, including ambitious long-term targets for the collection, re-use and recycling of e-waste to be undertaken to a very high standard; online retailers and marketplaces to have an equal obligation (to high street retailers) to collect electronic waste from customers; online marketplaces to be made responsible for ensuring that all electrical equipment sold on their platforms is fully safe and compliant; to ban the practice of intentionally shortening the lifespan of products through planned obsolescence; and to enshrine a right to repair electronic products in law. It also calls for stronger enforcement of the existing legislation by the EA.

**An inquest that may recognise air pollution as a cause of death for the first time begins.** We reported in [frESH Law Horizons March 2020](#) that a new inquest had been ordered into the death of a nine-year-old girl, who lived near one of London's busiest roads, and that it may lead to the courts recognising air pollution as a cause of death for the first time. The inquest started on Monday 30 November, and is expected to last about 10 days.

**European Commission continues the review of end-of-life vehicles legislation.** It has adopted an [Inception Impact Assessment \(IIA\) Roadmap](#) on the revision of [Directive 2000/53/EC on end-of-life vehicles](#) (ELV Directive). The ELV Directive was adopted in 2000, and the technology involved in producing vehicles has changed considerably, some of which can present challenges for recycling and recovery. The recycling of electric vehicles also needs to be fully considered. This initiative proposes improved collection, treatment and recycling of ELVs. It aims to ensure consistency with European Green Deal objectives by encouraging the car industry to adopt a sustainable model for the design and production of cars.





### European Commission finalises Phase IV (2021-30) of EU ETS and consults on revisions.

Phase IV starts on 1 January 2021 and the commission has now adopted [Commission Decision \(EU\) 2020/1722](#) establishing the EU cap on allowances (EUAs) to be issued in 2021. The timetable for auctions of allowances should be announced in early December. From 1 January 2021, the only UK emissions remaining in EU ETS are from electricity generation in Northern Ireland, under the Northern Ireland Protocol. The commission has also launched a [consultation on an inception impact assessment roadmap](#) on updating the EU ETS, identifying the need to strengthen it to support the EU's 2030 target for reducing greenhouse gas emissions to at least 55% of 1990 levels and its 2050 net-zero carbon target. It is proposing to adopt a proposal for a directive in Q2 of 2021.

### European Commission publishes a study on the “Quality of recycling: Towards an operational definition”.

Consultant Eunomia conducted the [study](#) for the project “Plant level data collection analysis on sorting and recycling of household packaging waste” of the commission’s Joint Research Centre (JRC). It developed an operational definition of “quality of recycling”: the extent to which, through the recycling chain, the distinct characteristics of the material (the polymer, or the glass, or the paper fibre) are preserved or recovered so as to maximise their potential to be re-used in the circular economy. To enable assessments of quality, the study proposes a set of quality categories for common packaging materials (glass, papers, PET and HDPE/PP), based on key characteristics of secondary raw materials and sorted packaging outputs that differentiate their suitability for use in manufacturing different types of products. It also examines which factors impact the quality and quantity of recycling outputs. EU law makes occasional reference to “high quality recycling” without defining it. For example, the revised Packaging and Packaging Waste Directive 94/62 tasks the commission with examining, by the end of this year, the feasibility of reinforcing the essential requirements with a view to, *inter alia*, improving design for reuse and promoting high-quality recycling – [the commission is currently conducting that revision](#).

### European Commission discusses amendments to, and guidelines on, shipments of plastic waste.

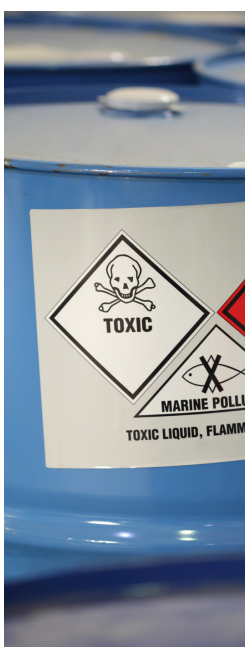
The commission [published the minutes](#) of the last meeting of the Waste Shipment Correspondents – authorities of the EU member states involved with the EU Waste Shipment Regulation 1013/2006 (WSR) – on 25 September. The commission reported that following amendments to the annexes of the UN Basel Convention (please see [frESH Law Horizons May 2019](#)), [OECD countries had made partial progress in updating their rules](#). It also gave an update on the delegated act to implement these changes in EU law (please see [frESH Law Horizons June 2020](#)), which it [adopted](#) subsequently and which is expected to enter into force at the start of 2021, assuming that neither Council nor European Parliament object to it. The commission explained that for shipments to non-OECD countries, the Basel entries would apply. As a consequence, the export to non-OECD countries of hazardous plastic waste (A3210) and certain non-hazardous plastic waste (Y48) would be prohibited. For non-hazardous plastic waste falling under entry B3011, the general information requirements of the WSR will apply. For exports to OECD countries outside the EU, such as the UK, the prior notification and consent procedure would apply for waste covered by OECD entry AC300 (hazardous plastic waste) and for waste covered by entry Y48. For non-hazardous plastic waste falling under entry B3011, only the general information requirements of the WSR would apply. For shipments within the EU, the current rules would be maintained. The meeting also discussed the development of [correspondents’ guidelines](#) number 12, which will focus on the amended entries to classify plastic waste. The guidelines represent the common understanding of all member states on the interpretation of the WSR. The commission clarified that guidance developed by the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL) would specifically target inspections. It noted that considerable work is still needed to arrive to a mature and useful document, but committed to presenting a third draft. That draft (not publicly available) interprets the terms “almost free from contamination and other types of waste” and “almost exclusively consisting of” as a total maximum of 2% mass of other, non-plastic waste, and other polymer waste, respectively, related to moisture-free weight. Simply put, consignments with more than 2% “impurity” would fall under entry Y48, or its intra-EU counterpart EU48, rather than B3011 (or EU3011). The consequence would be that those consignments would require prior written notification and consent, even within the EU.





### European Commission concludes the evaluation of the Environmental Crime Directive.

Directive 2008/99 requires member states to impose criminal penalties for certain breaches of EU environmental legislation. In its [European Green Deal](#) umbrella policy, the commission stated that it would promote actions by the EU, its member states and the international community to step up efforts against environmental crime. The [evaluation](#) covered the years 2011 to 2019 and all current member states, as well as the UK. The commission found that data and statistics on environmental crimes and enforcement actions in member states are very limited and, when available, they are often fragmentary and are neither consistent nor comparable with data in other member states. It was, therefore, difficult to establish whether the Environmental Crime Directive had achieved its specific objectives, in particular whether it resulted in a level playing field in relation to investigation, prosecution and sanctioning across member states, or whether national enforcement and sanctioning systems are a deterrent in practice. As possible actions to improve the functioning of the directive, the commission mentioned data gathering in a consistent manner throughout the EU and reporting to the commission; harmonising the level of sanctions; considering additional sanctions and sanctions linked to the financial situation of legal persons; extending the scope of the directive to more or new areas of environmental crime; and clarifying the relationship between criminal and administrative sanctions.



### European Chemical Agency (ECHA) updates the background note on the restriction of Bisphenol A (BPA).

The [document](#) notes that Germany concluded a REACH substance evaluation on 4,4'-isopropylidenediphenol (BPA) in 2016, and a Regulatory Management Option Analysis (RMOA) in 2017. In line with its findings, ECHA identified BPA as a substance of very high concern (SVHC) due to its endocrine disrupting properties for humans and the environment, in 2017 and 2018, respectively, adding it to the candidate list. The note observes that BPA is a high production volume chemical, which is used mainly as a monomer in the production of various polymers (e.g. polycarbonate or epoxy resins), but also as an additive in plastics. [Germany intends to propose a restriction](#) to minimise emissions of BPA to the environment, as an authorisation requirement would not address releases from imported articles. The refined scope of the restriction intention includes (a) the use as an additive and content in articles (0.02% by weight); (b) presence as residue (unreacted monomer) in articles – also for imported goods (0.02% by weight); (c) the use of mixtures with a content of 0.02% by weight for industrial and professional uses where strictly controlled conditions cannot be assured, e.g. in non-automated processes, and for consumer uses; and (d) introducing release rates for BPA from articles (products and subassemblies) during service life (weathering, leaching due to cleaning action). To avoid regrettable substitution, Germany intends to also address other bisphenols, which cause similar concern for the environment based on their structural and/or biological similarity. The note includes an exemplary, non-exhaustive list of bisphenols, which the restriction might address. A [call for evidence](#) runs until 15 January 2021; the note specifies the information sought. Germany's submission of its restriction proposal is expected by October 2021, after which ECHA would conduct two more public consultations.

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