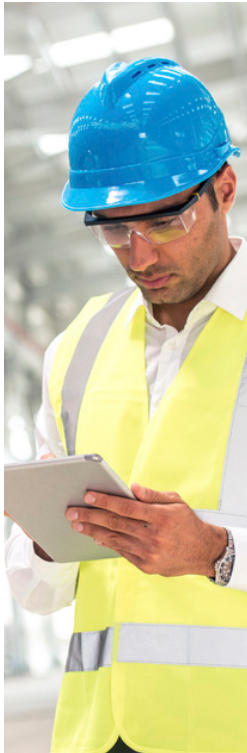


frESH Law Horizons

February 2021



COVID-19 route maps published. Route maps have been published for the staggered ending of lockdown in both [Scotland](#) and [England](#). In Scotland, there is an [indication](#) that the government will continue to consult with its Safer Workplaces Group, on topics such as face coverings, ventilation and testing. In England, although the “stay at home” message will end on 29 March, the government has [confirmed](#) that people should continue to work from home where they can. It is only before “step 4” (not to take place before 21 June) that the guidance around social distance, mask wearing and working from home where possible, will be reviewed. The Welsh government has not published an equivalent route map, but has instead indicated that it will look six weeks ahead at a time.

COVID-19-secure spot checks continue. The Health and Safety Executive (HSE) has [reported](#) that it is carrying out inspections in Hull. The HSE clarified that “All workplaces are in scope for spot checks, which means businesses of any size, in any sector can receive an unannounced check from HSE or an inspection from the local authority, to check they are COVID-19-secure”.

Court rules that Criminal Justice Act cannot be used to compel foreign company to produce documents held overseas. In [R \(on the application of KBR INC\) v Director of the Serious Fraud Office \(2021\)](#), the Supreme Court considered the provisions of the Criminal Justice Act 1987 (CJA 87), which empowered the Director of the Serious Fraud Office to issue a notice requiring the production of material for the purposes of an investigation and held: there were no grounds on which to imply extra-territorial effect; nor any justification for considering that the relevant provision of CJA 87 required a “sufficient connection” between the company and the UK.

BBC fined £28,000 for contempt of court after recording a judicial review hearing in the Planning Court related to the grant of planning permission for “fracking” operations.

The contempt related to the making and publishing of unauthorised recordings. In [R \(on the application of Finch\) v Surrey County Council \[2021\] EWHC 170 \(QB\) \(3 February 2021\)](#) the early acceptance of liability and an apology reduced the fine by approximately one third.

Landlord fined and sentenced to custodial sentence (suspended) for failing to maintain gas appliances at rental property. The HSE has [reported](#) on the sentence, which is a reminder that landlords can face criminal enforcement action if they fail to comply with legal requirements to have gas appliances regularly inspected or maintained, and to provide a Landlord Gas Safety Record. The HSE report indicates that the landlord had complied with Improvement Notices at a later date.

Government chemist published an article on the impact of COVID-19 on food fraud. The [article](#) identified a small increase in official food fraud alerts since the onset of the pandemic and greater press coverage of these incidents. The definition of food fraud, as referred to in the article, includes deliberate and intentional substitution, addition, tampering or misrepresentation of food, food ingredients or food packaging; or false or misleading statements made about a product for economic gain. The article refers to concerns prompted by counterfeiting and fraud seen in sanitiser products and personal protective equipment (PPE) and reports that the Food Authenticity Network concluded that “the conditions created by the pandemic have increased food fraud vulnerability but that there was insufficient evidence of ‘dramatic’ increases in specific COVID-19-related food fraud incidents”.



Consultation issued on proposed amendments to domestic food law. The Department for the Environment, Food and Rural Affairs (DEFRA) is consulting on changes to certain rules in England for products including meat, fruit curds, mincemeat, spreadable fats and flour, following the end of the Brexit transition period. The proposal is to remove the recognition clauses from the relevant product-specific regulations to require imports from the EU/EEA and Turkey to meet England's standards in future, as other countries have to (products from these countries were previously permitted to be sold in England, even though they did not meet national standards, because of the principle of "mutual recognition" of each other's goods within the EU). However, to ensure manufacturers can retain access to non-fortified flour, there is also a proposal to extend provisions allowing the selling of such flour for export to also include the use of such flour in manufacturing products destined for export. The [consultation](#) is open until 22 March 2021.

Home Office launches registry for Modern Slavery Act 2015 statements. Currently, use of the [registry](#) is voluntary. However, organisations are encouraged to publish their statements using the new service, ahead of legislative changes that will make this compulsory.

UK Supreme Court reverses court of appeal decision in Okpabi Nigerian pollution case. [The Supreme Court overturned](#) the Court of Appeal's decision on the claim by Nigerian citizens for damages in relation to oil pollution against Royal Dutch Shell plc (RDS). The Supreme Court decided that the Court of Appeal had made a material error in effectively conducting a mini trial and making determinations about contested evidence. It concluded that there was no "reliable limiting principle" that a parent company could never incur a duty of care for activities of a subsidiary by maintaining group-wide policies and guidelines. Control was the starting point and (following the Vedanta case) the issue is the extent to which the parent did actually take over or share management of the relevant activity. The Supreme Court, therefore, concluded that the majority of the Court of Appeal was wrong to decide that there was no real issue to be tried. This decision brings about the real prospect of cases being brought in the UK courts in relation to these issues.

Dutch Court of Appeal finds RDS subsidiary responsible for Nigerian oil spills. In a case brought by Friends of the Earth Netherlands and four Nigerian farmers, the Hague Court of Appeal in the Netherlands [held](#) that Shell Petroleum Development Company Nigeria (SPD), a Nigerian subsidiary of RDS, was liable for damages for oil spills in the Niger Delta. The court held that RDS was in breach of its duty of care. The court ordered RDS and SPD to install oil leak detection equipment, but has not yet determined the level of damages payable. This is interesting when considered with the Okpabi case noted above, and shows an increasing trend in such cases.

French Administrative Court ruling on French government's inadequate climate action. The Administrative Court in Paris (*Tribunal Administratif de Paris*) [held](#) that the French government was liable under both French law and EU law for taking insufficient action to meet its commitments to reduce greenhouse gas emissions, and that had contributed to environmental damage by exceeding France's annual carbon budgets. The case was brought by a group of non-governmental organisations (*Notre Affaire à Tous* and others). The court held off of issuing an injunction ordering the government to take stronger climate action and ordered the government to disclose, within two months, the steps it will take to meet national climate targets and carbon budgets. The court will issue a further decision after reviewing that information, and may require the government to take additional action.

[The Dasgupta Review](#) calls for changes in how we think, act and measure economic success to protect and enhance biodiversity. The Dasgupta Review is an independent, global review on the Economics of Biodiversity led by Professor Sir Partha Dasgupta. The review calls for changes in how we think, act and measure economic success to protect and enhance our prosperity and the natural world. It sets out a new framework for how we should account for nature in economics and decision-making, based on a deep understanding of ecosystem processes and how they are affected by economic activity. The key findings of the review include that humans have failed to engage sustainably with nature, so that our demands far exceed its capacity to supply us with the goods and services we rely on, endangering the prosperity of current and future generations. It says that large-scale reforms are needed, something like a "Marshall Plan", to steer the world onto a sustainable path. The 15th meeting of the Conference of the Parties to the UN Convention on Biological Diversity will meet in October 2020 and is expected to set new long-term international targets for addressing biodiversity loss.





Public Accounts Committee report examines progress made by the government towards enhancing the UK's natural environment. The report on achieving the government's long-term environmental goals says "[Time is running out: Government must 'move on from aspirational words' and start 'taking the hard decisions'](#)". The government first set its ambition to improve the natural environment "within a generation" in 2011, but nine years on, the Public Accounts Committee says "progress is disappointing" and that the complexity of environmental issues "is not a good enough excuse" for serious delays in tackling "critical environmental issues like air quality, water quality and wildlife loss" where the pace has been "painfully slow".

The [Definition of Waste Service](#) will remain closed until at least April 2021. This Environment Agency (EA) service was closed last year due to COVID-19 until at least January 2021, and this has now been extended to April. No one will be able to submit a request to the EA for an opinion on the waste status of material until this service reopens. This is disappointing for many companies seeking to promote circular economy solutions, but needing regulatory guidance on the waste status of recycled products.

A number of EA regulatory position statements (RPS) have been extended. These RPS address a range of activities and set out prescribed circumstances under which regulated activities can be undertaken without an environmental permit. [RPS 211](#) (when you can classify excavated waste from utilities installation and repair as non-hazardous) has been extended to 30 June 2022. [RPS 231](#) (when you can use additional waste codes to supply, store or landspread sewage sludge) has been extended to 31 January 2022. [RPS 244](#) and [RPS 243](#) (operating certain medium combustion/biomass burning activities while the EA determines a permit application) were extended to 30 June 2021. The EA has also added a new low risk waste position – "[Using whole waste tyres in construction: LRWP 79](#)" (replacing "Using whole waste tyres in construction: RPS 161").

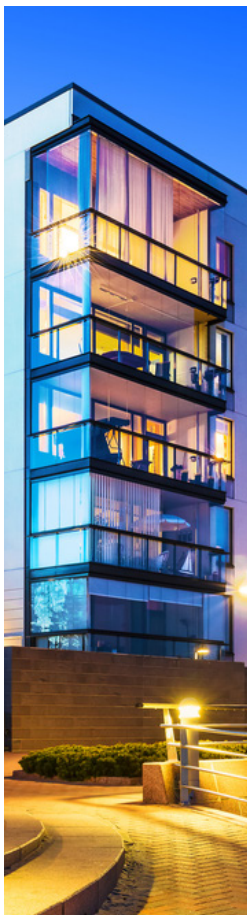
EA [published a consultation outcome](#) on standard rules permits for biowaste treatment. This includes anaerobic digestion, composting and sewage sludge treatment. The EA will make changes to the relevant standard rules permits, to include clear and more stringent operational standards, and will merge several standard permits for anaerobic digestion and composting. Affected operators will be moved to a like-for-like permit, as an administrative variation with no variation fee charged.

The [Interim Environmental Governance Secretariat \(IEGS\)](#) is now open. This is the body that is standing in for the Office for Environmental Protection (OEP), pending its statutory footing being delayed through the Environment Bill. The IEGS is intended to help uphold environmental governance standards until the OEP begins its work later this year. It is not yet certain if the OEP will have jurisdiction of Northern Ireland (NI), but the IEGS's remit extends to the handling of complaints in NI, to avoid any gap in coverage should the NI Assembly agree to this extension of the OEP's remit. The IEGS will receive and assess complaints from members of the public about failures by public bodies to comply with environmental law, and will undertake preparatory work to ensure that the OEP can swiftly produce its report on the [25 Year Environment Plan](#).

[Public Health and Air Quality: Increasing need for Clean Air Zones?](#) The UK's existing particle (PM2.5) pollution limit is two-and-a-half times higher than the World Health Organisation's (WHO) recommended limits, and the [Environment, Food and Rural Affairs Committee is calling](#) for the WHO recommendations to be put into law, and reflected in the (once again) delayed Environmental Bill. This short article by Eloise Cranshaw discusses what this may mean for clean air zones.

EA [consults to safeguard water supplies and protect the environment](#). Seven additional water company areas may need to adopt the highest level of water-saving measures. The Environment Agency has launched a four-week consultation today to determine areas of water stress in England, and how best to protect the environment and safeguard supplies. Climate change, population growth and the need to improve our resilience to droughts are all putting pressure on water supplies in areas of England.





Draft regulations for UK emissions trading scheme (UKETS) auctioning have been published, and UKETS guidance has been updated. The draft Regulations set out the system for auctioning UK emissions allowances and a secondary market for trading allowances under UKETS. Amended guidance on Participating in the UKETS has also been published. This confirms that the auction reserve price (the minimum price at auction for emissions allowances under UKETS) will be £22/tonne of CO₂ (compared to the government's previous proposal of £15). Later in 2021, the government plans to consult on removing the reserve price. Further guidance on how to comply with UKETS is expected shortly, together with guidance for the small emitters and hospital opt-out scheme and the ultra-small emitter exemption.

Government circular confirms “nearly zero” energy requirements for new buildings.

In a [circular letter](#) to building regulators in England, the Ministry of Housing, Communities and Local Government (MHCLG) clarifies the implementation of the requirement (under Regulation 25B of the Building Regulations 2010) for new buildings to be “nearly zero energy” from 31 December 2021. This requirement has applied to public buildings since 1 January 2019, but broadens out to all new buildings from the end of 2021. The letter confirms that compliance with this requirement is achieved by both meeting the target emission rate required under Regulation 26 and undertaking an analysis of the technical, environmental and economic feasibility of using high-efficiency alternative systems, which include decentralised energy supply systems based on energy from renewable sources and taking this analysis into account as required by Regulation 25A.

DEFRA has published guidance on the duty to protect, conserve and restore European sites. The guidance sets out how competent authorities (public bodies, water companies and government ministers) must take action to help protect, conserve and restore the protected habitats and species of European sites (Special Protection Areas and Special Areas of Conservation) in the UK.

Government updates f-gas and ozone depleting substance guidance. New guidance has been published on [moving F gas between Great Britain and Northern Ireland](#), and [moving ozone-depleting substances between Great Britain and Northern Ireland](#), setting out the new procedures following the UK's exit from the EU.

Recent EA high-profile publications and statements highlight a number of key issues.

As the government's roadmap out of lockdown is announced, the EA chief executive, Sir James Bevan, called for the same effort in tackling the “unseen pandemic” of [climate change and says that climate emergency impacts are hitting “worst case scenario” levels](#). In another recent statement, Sir James called for [better regulation to protect the environment](#) as a new report highlighted the importance of environmental regulation in England. He said that now the UK has left the EU, “better regulation, not deregulation, is needed to allow companies to thrive while protecting nature and communities from the effects of climate change and other risks such as new technologies”. The EA's latest annual report on its regulation work and the environmental performance of regulated businesses in England “[Regulating for people, the environment and growth](#)” has also recently been published, as well as a new EA service commitment: [Environment Agency customer service commitment: what you can expect](#). The [final EA quarterly corporate scorecard for 2020/21 \(1 April to 30 June 2020\)](#), has also been published, with the main notable point being a change to the way the EA reports its corporate performance, which now omits a goal of reducing pollution incidents (replaced with a target to have a “a first class incident response capability”, based on the number of staff trained to and ready to respond) but introduces new climate adaptation and air quality targets.

New UK-only system to apply for RoHS exemptions is launched. Following the UK's departure from the EU, the UK has set up its own system of RoHS exemptions, previously managed at EU level. New gov.uk guidance sets out [how to apply](#) for exemptions and provides a new [exemption application form](#). Previous exemptions are still in place (until their expected expiry dates), but this is a new procedure for new exemptions or the renewal of expiring exemptions.



Energy Savings Opportunity Scheme (ESOS) guidance has been updated. The updates add in details and dates for the third compliance period, deal with some accessibility issues and update or correct a variety of other sections (including on record keeping and certain dates).

A new report on UK Regulation after Brexit. The report, written by a multidisciplinary team of academics, looks at UK policy and regulation after the end of the transition period. It focuses on the policy choices made by the UK government, especially on whether to retain the substance of existing EU policy through minimal changes under the European Union (Withdrawal) Act 2008, or to enact radical policy reform, and its decisions on the structure and organisation of UK regulation. In particular, the report looks at key policy areas, such as the environment, and looks at divergence and gaps. The report says that short term measures “prevented a sudden discontinuity in environmental regulation after the transition period came to an end.” However, it notes that the EU “is understandably concerned that the UK will seek to weaken its standards to secure an unfair trading advantage” and that “whilst the UK government could have alleviated this concern by inserting a ‘non-regression’ or non-weakening clause into the Environment Bill it has refused to do so”.

Environmental Audit Committee (EAC) report: Growing back better: putting nature and net zero at the heart of the economic recovery. The [report](#) says that if “the economic recovery from COVID-19 is not used as an opportunity to ‘grow back better’, then climate change and biodiversity collapse may deliver an even greater crisis. There will be no vaccine against runaway climate change.” The report includes a call on the government to use the latitude it now enjoys following the UK’s exit from the EU to reduce VAT on repair services and products containing reused or recycled materials, to increase the circularity of the UK economy, and to begin scoping work on a carbon tax and an accompanying border carbon adjustment tariff to incentivise low carbon changes across the economy.

Council serves injunction on illegal waste site in Kent. Maidstone Borough Council [secured an interim High Court injunction](#) to prevent further serious harm to a site that is located within an Area of Outstanding National Beauty, a designated Ancient Woodland and covered by a Tree Preservation Order. The Council has been investigating the site for several years and a previous enforcement notice to stop unlawful waste disposal and restore the land had been ignored by the site’s apparently reclusive owner. The enforcement notice had required that the land should not be used for residential purposes, stationing of caravans, the storage of motor vehicle/vehicle parts, storage of building materials and waste, highways equipment and domestic items and that these should be removed.

25 businesses and chemical industry associations write to government calling for a rethink on post-Brexit chemicals regime. The letter itself has not been published but appears to have been leaked and was reported by the [Financial Times](#), and picked up by other [media sources](#). According to reports, the letter is “strongly worded” and demands a radical rethink of the UK REACH regime. The regime is criticised as “perversely” costly, contradictory to the “levelling up” agenda and leading to pointless animal testing, and the letter warns that it will “hit UK industry hard across a range of manufacturing sectors” and drive business away. In response, others have cautioned the government to [hold the line](#) on chemical safety, because the changes being called-for “lead to substantial deregulation and lead to a regrettable loss of transparency and increased risk of harm to people and the environment.”





EU Court's advisor suggests [the Commission's decision refusing to review the authorisation of the plasticiser DEHP \(bis\(2-ethylhexyl\) phthalate\) should be annulled.](#)

The opinion of Advocate General Kokott relates to a case brought by ClientEarth (Case C-458/19 P, please see [frESH Law Horizons June 2019](#)). In 2016, the Commission granted REACH authorisations to three recycling companies to use recycled soft PVC containing DEHP, among other things, to produce PVC articles. The authorisation was granted by the Commission on the basis that the socioeconomic benefits outweighed the risks. ClientEarth asked the Commission to carry out a review of that authorisation pursuant to the Aarhus Regulation 1367/2006. The Commission rejected that request on the ground that it was unfounded. ClientEarth unsuccessfully challenged that rejection before the European General Court (please see [frESH Law Horizons April 2019](#)), and appealed that court ruling. In her opinion, Advocate General Kokott proposes that the Court of Justice should set aside the judgment of the General Court and annul the Commission's rejection of the review, on the ground that the General Court and the Commission accepted that the authorisation of DEHP was based on an incomplete balancing exercise. However, the opinion notes that, although the authorisation decision is, therefore, deficient, it would not be directly affected by the annulment of the review decision, which is the immediate subject of this case. The Advocate General argues that it cannot be ruled out that the Commission instead grants a new authorisation pursuant to Article 60(2) REACH, with the result that the request for internal review made by ClientEarth would become devoid of purpose. She also opined that ClientEarth's arguments relating to the use of waste are unfounded. The Court's ruling on the fundamental issues raised in this case remains to be seen. Advocates' General opinions are not binding upon the Court, but are followed in the majority of cases.

EU court dismisses appeal regarding the authorisation of lead chromate pigments, confirms burden of proof for REACH authorisations.

These proceedings started in January 2017, when Sweden brought a landmark case against a Commission decision to grant authorisations under REACH for certain uses of lead sulphochromate yellow and lead chromate molybdate sulfate red (case [T-837/16](#)). The durable and bright pigments are used widely in road markings, to paint bridges, cranes and other steelwork. In March 2019, the European General Court annulled the authorisation. However, the European Commission appealed that ruling in July 2019 (case [C-389/19](#); please see [frESH Law Horizons March 2019](#) and [May 2019](#)). Due to a [successful procedural application](#) by the Commission, the authorised uses have been allowed to continue while the appeal has been pending. The European Court of Justice dismissed the appeal (with one exception discussed below). In particular, it rejected the Commission's argument that it was "impossible to satisfy" the level of proof that the lower court had demanded to demonstrate the absence of technically and economically viable alternatives to the authorised uses. The higher court confirmed that "absolute certainty" is not required and agreed with the lower court that the Commission had "failed to fulfil its obligation to verify the lack of availability of alternatives" in this case. The standards that the court confirmed for the assessment of alternatives will likely be of fundamental importance for the application of the REACH authorisation procedure. The court also ordered that the effects of the original authorisation decision will be maintained until the Commission has adopted a fresh decision on the application, meaning that the authorised uses will be allowed to continue (at least) until then – on the basis that this was preferable to returning to the transitional position where unrestricted use is allowed until an authorisation decision is made, which would actually increase the risk of serious and irreparable damage to human health and the environment.

European Commission issues [inception impact assessment on Revision of the Energy Performance of Buildings Directive.](#)

In 2020, the Commission presented its "Renovation Wave" strategy to boost energy renovation of buildings in the EU. This strategy contains an action plan with: (i) regulatory, financing and enabling measures; and (ii) the goal of at least doubling the annual energy renovation rate of buildings by 2030. This goal requires a revision of the Energy Performance of Buildings Directive, focussing on provisions that are central to boosting building renovation. The consultation is open for feedback until 22 March 2021.



European Chemicals Agency (ECHA) has published a [study on costs and benefits of REACH restrictions](#). The study presents ECHA's analysis on the impacts of REACH restrictions proposed in 2016-2020. It also aggregates the overall impact of restrictions by including the findings of the first costs and benefits of restrictions report published in 2016.

ECHA estimates that restricting the manufacture and use of chemicals that pose a risk in the EU results in health benefits worth around €2.1 billion each year over the next decades, which significantly outweighs the associated costs to society (approximately €0.5 billion per year).

European Parliament resolution calls for tighter EU consumption and recycling rules.

We reported in [frESH Law Horizons January 2021](#) on the European Parliament Environment Committee's call for waste reduction and recycled content targets. The committee's report has now been adopted by [resolution](#) of the European Parliament.

EU member states further discuss position on chemicals strategy. The Council, the EU institution composed of the member states, continued to discuss its reaction to the Commission's October 2020 [Chemicals Strategy for Sustainability](#). It amended its draft Council conclusions (not yet publically available; please see [frESH Law Horizons January 2021](#)). They generally welcome the CSS as a long-term vision for the production and use of safe and sustainable chemicals, which enable the green and digital transitions by minimising and substituting substances of concern as far as possible, and for phasing out the most harmful chemicals for non-essential societal uses. The transition to safer and more sustainable materials, in particular in consumer products, will lead to toxic-free material cycles towards a clean circular economy. They underline the importance of phasing out the hazardous substances in products and recycled materials, thus ensuring the waste management is consistent with the waste hierarchy, but acknowledges that derogations may be needed for recycled materials, under certain conditions. Regarding REACH registration, the draft conclusions underline the need to enforce the "no data no market" principle and a zero tolerance approach to non-compliance, and support the announced REACH registration, authorisation and restriction processes reform. They call on the Commission to present a roadmap for this work without delay, and generally to fully implement the CSS without undue delay and in accordance with both the precautionary and the prevention principles. The Council is expected to adopt the conclusions in March. The draft could change further until then. Together with the resolution of the EP (please see [frESH Law Horizons July 2020](#)), they are to inform the further implementation of the CSS. A [European Environment Agency \(EEA\) briefing](#) on the Chemical Strategy has also recently been published, describing key approaches to make chemicals and products safe and sustainable by design, before they enter the market.

ECHA committee agrees with new classification of Bisphenol A (BPA). ECHA [made available](#) the opinion of its Committee for Risk Assessment (RAC) on a proposal to amend the harmonised classification and labelling (CLH) of BPA under the EU CLP Regulation 1272/2008, comments received by RAC and RAC's responses to them. RAC agreed with the CLH proposed by German Competent Authority (*BAuA*) in September 2019. It identified two additional hazards of BPA: very toxic to aquatic life and very toxic to aquatic life with long-lasting effects. Now, the European Commission has the power and duty to adopt a delegated act "without undue delay" to include the proposed CLH in the CLP Regulation, "where it finds it appropriate", and after consulting CARACAL, the meeting of the competent authorities for REACH and CLP. The delegated act would then enter into force if neither the European Parliament nor the Council objects to it within two months of being notified of it. BPA would then need to be labelled accordingly. Further knock-on effects in laws that are based on the classification are possible.





Discussions around the Single-use Plastics Directive continue. Ahead of the looming general application date of the [EU Single-use Plastics Directive 2019/904 \(SUPD\)](#) in July this year, stakeholders and policymakers have continued to controversially discuss a recent draft of guidelines on the scope of the SUPD (not publically available). Some 50 NGOs co-signed a [letter](#) to Commission Executive Vice-President Timmermans and Environment Commissioner Sinkevičius to “express [their] strong support for the most recent version of the” SUPD scope guidance, which held “true to the spirit of the Directive, and maintain[ed] the necessary ambition required to tackle plastic pollution.” Conversely, 33 Members of the European Parliament (MEPs), [led by the Chair of its Industry Committee](#) sent a letter to Commission President von der Leyen (not publically available), stating that they are very concerned that the draft guidelines would extend the scope of the SUPD to single-use paper cups (with plastic coating). They called on the Commission to reconsider the draft, also in light of a [LCA study conducted by Ramboll](#) for the [European Paper Packaging Alliance](#). Five MEPs posed a [parliamentary question](#) with the same implication to the Commission. BusinessEurope also expressed its concerns over the current draft in a [letter](#) to the Commission President. [17 industry organisations had warned](#) the Commission that the draft guidelines undermine the Commission’s strive for better regulation. The SUPD tasks the European Commission with publishing the discussed guidelines by 3 July 2020. The Commission has yet to do so.

NGOs oppose mass balance approach to chemical recycling. Zero Waste Europe (ZWE), ECOS and nine other organisations called on the European Commission to avoid the mass balance approach in a [letter](#), which builds on a [position paper](#). They describe “mass balance” as an accounting principle that matches inputs (such as plastic waste) with outputs from a recycling or production process, to determine the recycled content. Rather than mass balance, a “chain of custody” method with physical segregation of virgin and (chemically) recycled plastic feedstock should be used. Otherwise, plastic products could be greenwashed as “fully recycled” while containing only very small fractions of actual recycled content, they said. They presented 10 recommendations, including using a “batch level” mass balance approach, only when segregation is not feasible. Trading of recycled content as part of a credit system should not be allowed. Furthermore, the NGOs reiterated their demand that only processed post-consumer waste should be counted as recycled content. The Commission is currently preparing laws on calculation, verification and reporting of recycled content by the member states, implementing [the SUPD](#). It is supposed to adopt these laws by January 2022.

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