

frESH Law Horizons

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UK

Airline company fined £1.8 million after employee was crushed by an airline tug pulling a train of luggage.

A worker for the airline was using the centre of a roadway at Terminal 5 of Heathrow Airport when they were struck by a tug pulling a train of dollies (vehicles used to transport baggage around the airport). The tug train pushed the worker into the path of another tug that was also pulling luggage and it was at that point that the worker sustained serious crush injuries. According to its [press release](#), the HSE investigation found that walking around this area of the terminal was commonplace and had been for approximately 10 years. The HSE concluded that this was an incident waiting to happen and the airline should have taken appropriate steps and actions to protect its workers. The significant fine in this case demonstrates that complacency in respect of dangerous working practices over a prolonged period will be treated seriously by the HSE and the court. It is a reminder that longstanding practices should be critically assessed by businesses in a similar way to new processes or practices.

NHS Trust fined £1.5 million and ordered to pay costs of £86,222 after failing to manage risks.

The NHS Trust pleaded guilty to breaching s.3(1) of the Health and Safety at Work Act 1974 after it was found to have failed to effectively manage recognised risks from potential fixed ligature points in its inpatient wards. This was alleged to have resulted in mental health patients being exposed to unacceptable and avoidable risks. According to its [report](#) on the case, the HSE inspector noted that it had been widely recognised that a key control in the prevention of inpatient death or self-harm is the identification and removal of potential fixed points of ligature. The Trust was found to have failed, over a period of more than 10 years, to manage these well-documented risks; and to learn from tragic experiences, including the deaths of 11 inpatients over the course of that period. This was another case involving longstanding practices and the fine also reflects a failure to address widely recognised concerns in a particular sector, in this case, a sector responsible for the safety and health of vulnerable individuals.

The OPSS has issued guidance on responsible economic operators for the Northern Ireland market.

The Office for Product Safety and Standards (OPSS) has issued [guidance](#) this month for businesses who wish to place certain products on the Northern Ireland (NI) market from 16 July 2021. EU rules apply to goods placed on the market in NI while the NI Protocol is in force. The guidance relates to compliance with EU Regulation 2019/1020, on market surveillance and compliance of products, which has particular relevance to goods sold online direct to consumers. Businesses who wish to place goods on the EU market (including those from Great Britain) must have an economic operator based in the EU responsible for compliance.



The National Audit Office (NAO) published its report on UK product safety regulation. The NAO published its [report](#) on the 16 June 2021, which examined whether the work undertaken by the OPSS effectively protects consumers. Since its introduction, the OPSS has initiated a response for five national incidents: two relating to Whirlpool appliances; two during the COVID-19 pandemic for face coverings and hand sanitisers sold online; and one on small, high-powered magnets. This is in the context, though, of a total spend reduction of 39% by Trading Standards services in England over a 10-year period; and also in the context of increasing pressures on regulators of product safety, in anticipation, among other things, of up to 2.8 million lorries arriving at Dover, in scope for product checks from January, up from around 100,000 previously. With an increasing scope and limited resources, effective and consistent enforcement activity is likely to be challenging.

Some of the key findings of the report show that regulators are reliant on influencing industry to comply with product regulations. Better regulation of online sales has also been recognised as an issue, particularly in light of a growth in online marketplaces during the pandemic and the OPSS is considering how improvement in regulation can be made in the area. The OPSS has indicated that it will use the recommendations as it works to develop a new regulatory framework and the government is expected within the next 12 weeks to publish a summary and evidence paper regarding reform of the product safety regulatory regime

Security firm fined £250,000 after an employee was attacked by youth offenders. An employee of a [private security firm](#) was working alone with a group of six youth offenders at a youth offender training centre when an incident escalated resulting in four individuals attacking the employee. He suffered brain damage and required a plate to be fitted in his skull. The HSE found that the security firm had failed to make sure that robust procedures were in place to ensure that inexperienced staff were not working alone with people who presented a high risk of violence. The security firm pleaded guilty to breaching section 2(1) (general duties of employers to employees) and 33(1)(a) (a failure to discharge a duty to which a person is subject) of the Health & Safety at Work act 1974. The HSE publishes [guidance](#) on lone working, which businesses employing individuals who may work alone should ensure they are familiar with.

Bill proposes amendments to Modern Slavery Act to introduce an offence for false or incomplete information included in a business's modern slavery statement. The Modern Slavery Act 2015 requires large businesses each year to produce a statement that either sets out the steps they have taken to ensure that their business and supply chains are slavery free or a statement that they have taken no steps to do this. The new [Modern Slavery \(Amendments\) Bill](#) seeks to amend the Modern Slavery Act 2015 and insert section 4ZA so that a person will commit an offence if the information included in the statement is false or incomplete and the person knows it is or is reckless when making the statement.

Crown Prosecution Service (CPS) has updated its guidance on prosecuting "failure to disclose" offences. The CPS has updated its [guidance](#) on how prosecutions for standalone failure to disclose cases under s.330 of the Proceeds of Crime Act 2000 will be conducted. This relates to failing to report any knowledge or suspicion of money laundering to the relevant money laundering reporting officer, or the National Crime Agency. The updated guidance means that the CPS is more likely to prosecute for this standalone offence, regardless of whether an offence of money laundering has been substantiated (it specifically notes that section 330 can be a standalone charge; and it is not necessary to prosecute the defendant or other persons for money laundering, although consideration should be given to this where the evidence is available). The reasoning behind the updated guidance is to encourage professionals working in the regulated sector to disclose any suspicions of money laundering that they may have.



Law Commission discussion paper on corporate criminal liability. The Law Commission (Commission) published a [discussion paper](#) and launched a [consultation](#) on corporate criminal liability on 9 June 2021. The Commission is inviting views on how the law in this area can be improved to capture and punish offences committed by corporations, directors and other senior managers. The consultation ends on 31 August 2021 with an options paper due for publication towards the end of the year. The Commission cites problems that arise because the general rule for attributing liability to companies is a requirement for the acts of a senior person representing the company's "controlling mind and will" to be attributed to the company, where the relevant offence involves a particular state of mind (such as intent), albeit with some exceptions, such as regulatory offences, strict liability offences, corporate manslaughter and offences that involve a "failure to prevent" a particular activity (such as bribery). There is concern that the general position does not adequately deal with misconduct carried out by and on behalf of companies (and other "non-natural persons"); and, in particular, it may be disproportionately difficult to prosecute large companies for economic crimes committed in their names, by senior managers, for the company's benefit. The discussion paper sets out alternative approaches to corporate criminal liability in other jurisdictions, including the US and Australia. The Commission asks a number of questions, including whether there should be "failure to prevent" offences, such as those relevant to bribery, in respect of other economic offences. The consultation is perhaps an early indication of the ways in which corporate criminal liability will continue to evolve in the UK in coming years.

Revised Proceeds of Crime Codes of Conduct introduce new powers to officers. On 28 June 2021, [three](#) revised codes of conduct were introduced in relation to the Proceeds of Crime Act 2002. The new codes revise matters such as officers' power to search persons, vehicles and premises for money and certain assets that have derived from or intended to be used in unlawful conduct, along with officers' right to undertake certain investigations concerning the recovery of the proceeds of criminal conduct.

Offshore oil company fined £400,000 after hydrocarbon gas release. The HSE has [reported](#) on the fine, after 1000kg of hydrocarbon gas was released following maintenance work on an offshore installation. A technician was carrying out work on a depressurisation tank on an oil well when the leak occurred. The HSE found that there was no documented procedure to outline the steps for how the work should have been carried out, with the technician undertaking the complex task by memory. As a safety-critical task, the depressurisation of an oil well should have been formalised in a written procedure to set out a specified sequence of operations to perform the task correctly. The HSE recognised that the offshore industry has reduced the overall number of hydrocarbon releases although noted that releases still happen most years. Specific [guidance](#) in the area has been published by the HSE to assist those in the sector when it comes to their reporting obligations.

Car dealership fined £360,000 after two apprentices suffer chemical burns. A [car dealership](#) pleaded guilty to breaching regulation 7(1) of the Control of Substances Hazardous to Health Regulations 2002, fined £360,000, and ordered to pay costs of £12,622 after two apprentices suffered burns to their hands and arms while cleaning vehicle ramps. The apprentices used a chemical from an unlabelled barrel, which caused the burns and resulted in them being hospitalised. On investigation, the HSE found that the dealership had failed to make sure that exposure to the hazardous substance was either prevented or adequately controlled. The case is a reminder of requirements in relation to hazardous substances and associated risks.



The Committee on Climate Change (CCC) published its third Independent Assessment of UK Climate Risk.

The report provides the CCC's statutory advice to government on priorities for the forthcoming national adaptation plans and wider action. It is informed by extensive new evidence gathered for the Climate Change Risk Assessment (CCRA3) Technical Report. CCC reports that this new evidence shows that the gap between the level of risk we face and the level of adaptation underway has widened. CCC says that the UK has the capacity and the resources to respond effectively to these risks, but it has not yet done so, and identifies eight risk areas that require the most urgent attention in the next two years. Just over a week after CCRA3, the CCC published a double report to parliament on annual progress in climate change adaptation and net zero. This report provides a comprehensive overview of the UK government's progress to date on reducing emissions and adapting to climate change and offers more than 200 policy recommendations covering every part of government.

Legislation sets limits on carbon units from overseas to meet the fourth carbon budget. The [Climate Change Act 2008 \(Credit Limit\) Order 2021](#)

came into force on 24 June 2021. The Climate Change Act 2008 requires a series of five-year carbon budgets to be set and achieved, in order to reach the overarching net zero 2050 target. The Order sets a limit of 55 million on the number of carbon units from non-UK sources that the government can "count" towards meeting the fourth carbon budget (2023 to 2027). The legislation to give effect to the UK's sixth carbon budget (2033 to 2037) also came into force this month. The UK's sixth carbon budget sets the world's most ambitious state level climate change target so far, to cut greenhouse emissions by 78% by 2035 compared to 1990 levels, and this budget includes for the first time the UK's share of international aviation and shipping emissions.

UK government will require businesses to commit to net zero by 2050 as a condition of bidding for any major government contracts. [Procurement Policy Note \(PPN\) 06/21](#)

states that the new measures will apply to all central government departments, their executive agencies and non-departmental public bodies. These organisations must apply the new conditions when procuring goods, services or works with an anticipated contract value of over £5 million per annum. We expect local government and other public bodies such as the NHS to follow suit. In relation to any procurements over £5 million advertised on or after 30 September 2021, all bidders will now be required to submit a clear and credible carbon reduction plan, detailing their organisational carbon footprint along with confirmation of their commitment to achieve net zero for their UK operations by 2050. Further details are set out in our [briefing note](#).

Carbon Reduction Code for the Built Environment aims to help reduce carbon emissions of built assets. The

Cambridge Centre for Smart Infrastructure and Construction (CCSIC) has published this code, which is not a replacement for any existing building standards, but is intended to enable organisations to publicise annually their progress towards net zero emissions. It also aligns with PPN 06/21 mentioned above, so this Code could be used towards the requirements of this PPN. Organisations can apply to be declared as complying with the Code, or pledge to meet it at a future date, and will respectively be listed online as "complying" or "pledging to comply". The Construction Industry Council has also published [Carbon Zero: the professional institutions' climate action plan](#), which seeks to coordinate the efforts of professional institutions involved in the built environment towards meeting the government's 2050 net zero target. There are just under 30 signatories to this, who are professional institutions in the built environment sector, and they have committed to developing and publishing an implementation programme by October 2021, prior to COP26.



Task Force on Climate-related Financial Disclosures (TCFD) consults on new guidance. TCFD has issued on consultation on guidance for organisations who want to put in place climate-related metrics, targets and transition plans. This new proposed guidance also makes changes to TCFD’s 2017 guidance on implementing the recommendations of the TCFD. Also published for consultation is a technical supplement on measuring portfolio alignment, assessing the options available when using metrics to measure the alignment of financial portfolios with climate-related goals. The consultations close on 7 July 2021. In early June, G7 finance ministers and central bank governors also issued a *communiqué* in support of moving towards mandatory climate-related financial disclosures for market participants, based on the TCFD framework and agreeing that there needs to be a baseline global reporting standard for sustainability.

HM Treasury launched the Green Technical Advisory Group (GTAG) to help tackle “greenwashing”. GTAG is a new independent expert group to advise on standards for green investment and will oversee the government’s delivery of a Green Taxonomy – a common framework setting the bar for investments that can be defined as environmentally sustainable. The Green Taxonomy is intended to help clamp down on greenwashing (unsubstantiated or exaggerated claims that an investment is environmentally friendly) and make it easier for investors and consumers to understand how a firm is impacting the environment.

Research commissioned by the Department for Environment, Food and Rural Affairs (DEFRA) explores the potential impact of different societal changes in reaching net zero. The analysis carried out by Energy Systems Catapult explores the potential impact of different societal changes in reaching net zero. It builds the evidence base around societal change and net zero by reviewing existing evidence and mapping behaviours, modelling impacts of different behaviours, identifying potential improvements for energy models going forward, and includes an international review of public engagement and participation initiatives.

Beyond COP26: The UK’s Green USPs. This report launches Policy Exchange’s new programme, Beyond COP26, in the run up to the COP26 climate conference. The programme is co-chaired by two former Energy Secretaries, Rt. Hon. Andrea Leadsom MP and Rt. Hon. Amber Rudd. In the report, they call on the government to focus on the UK’s three “Green Unique Selling Points”: Science and technology; financial services; and political leadership on climate action. The purpose of the report is harnessing the UK’s strategic strengths to boost jobs at home and environmental progress around the world.

Climate action succeeds in the Federal Court of Australia for the first time. In [Sharma and others \(by their litigation representative Sister Arthur\) v Minister for the Environment](#), the court held that the Minister for the Environment had a duty to take reasonable care to avoid causing personal injury to the applicants (eight Australian teenagers) when deciding whether to approve planning permission for a coal mine extension. However, the court refused to grant an injunction preventing the permission from being granted. The claimant sought an injunction to prevent the government approving the extension on the grounds that it would intensify climate change and cause injury to youth in the future. This is the latest in a growing line of cases around the world that are giving more weight to personal injury/human rights based claims in relation to climate change impacts, and we are likely to see more of these sorts of cases being brought in the UK.



The UK High Court dismisses a challenge of the UK Emissions Trading Scheme (UKETS) on climate grounds.

In [Elliott-Smith v BEIS](#), the court dismissed the claimant’s application for judicial review of the UKETS. The claimant was seeking to challenge the UKETS on the basis that the government’s decision to introduce the scheme it did not take into account the short to medium term urgency of the Paris Agreement and does not fulfil the statutory purpose for establishing trading schemes under section 44 of the Climate Change Act. The case was dismissed on the grounds that it is not the place of the courts to rule on the construction of international agreements such as the Paris Agreement, although it may be asked to assess whether the government’s approach to the Paris Agreement was “tenable and appropriate” (which the court then ruled it was satisfied about). The court also considered that UKETS met the requirements of the Act, and such measures did not necessarily have to achieve a reduction in the activities causing greenhouse gas emissions.

The Department for Business, Energy and Industrial Strategy (BEIS) is consulting on compensation relating to the UKETS and the Carbon Price Support (CPS).

The consultation revolves around indirect costs incurred by energy intensive industries due to the UK ETS and the CPS in the short to medium term. This can lead to “carbon leakage” (relocation of business away from the UK to avoid such costs), and, therefore, the government may compensate the operators who are exposed to a significant risk of these costs, in order to avoid carbon leakage. This consultation seeks views and evidence on the risk of carbon leakage due to these indirect emission costs, which sectors are most at risk and the design of the potential compensation scheme. The consultation closes on 9 August 2021.

The government issued its response to the Coroner’s Prevention of Future Deaths Report in relation to Ella Kissi-Debrah.

Ella died in 2013 at the age of nine and the inquest into her death was reopened in December 2019, concluding in December 2020 that she died of asthma contributed to by exposure to excessive air pollution. The subsequent Coroner’s report called for action to be taken to prevent future deaths. The government response states that it will increase public awareness about air pollution, increase local authority funding, work on a more systematic approach to asthma management, and consult on new legal targets for PM2.5 and other pollutants early next year, with the aim of setting new targets in legislation by October 2022. The government says that it has used the World Health Organisation (WHO) guidelines on PM2.5 “to inform its ambitions in shaping these targets.” The Environment Bill does not currently contain a commitment to meet the World Health Organisation limit for PM 2.5, but this has been widely called for, including most recently by the [leaders of 20 medical associations](#). This issue is also being debated as the Bill continues its progress through the House of Lords.

Task Force on Nature-related Financial Disclosures (TNFD) is launched and publishes its first report (Nature in Scope).

The Task force will consist of approximately 30 members, with an equal representation of financial institutions, corporates and data/service providers from developed and emerging markets, and will be informed by a diverse stakeholder group. Nature in Scope summarises the way forward for the next two years, and sets the stage for a market-wide shift in how nature-related risks are reported and acted upon. It sets out how TNFD will deliver a framework for organisations to report and act on nature-related risks, and shift investment towards nature-positive outcomes. As the name suggests, TNFD follows in the footsteps of TCFD, which has gained significant international traction in the field of climate reporting. Another output of the recent G7 meetings was an agreement to commitments to halt and reverse biodiversity loss by 2030, and tackle deforestation, marine litter and illegal wildlife trade, in the [G7 Nature Compact](#).



HM Treasury published the government response to the Dasgupta review on biodiversity. The Dasgupta review in February 2021 called for a fundamental shift in economics to reverse biodiversity loss. The government agrees with the “review’s fundamental conclusion: nature, and the biodiversity that underpins it, ultimately sustains our economies, livelihoods and well-being, and so our decisions must take into account the true value of the goods and services we derive from it.” The government, therefore, commits to: (1) delivering a “nature positive” future, in which we leave the environment in a better state than we found it, and reverse biodiversity loss globally by 2030; and (2) ensuring economic and financial decision-making, and the systems and institutions that underpin it, supports the delivery of that nature positive future. The government is already proposing to amend the Environment Bill so that new nationally significant infrastructure projects (NSIPs) in England will need to provide biodiversity net gain, and to add a legally binding species abundance target in England for 2030.

British Standards Institution (BSI) publishes the first standard for Natural Capital Accounting for Organisations. Its purpose is to provide organisations with a deeper understanding of how their operations impact and depend on natural capital assets like geology, soil, water, air and living organisms, to underpin decision-making. The standard presents terminology, principles, steps and outputs for creating a natural capital account to enable a transparent and repeatable practice. Use of such a standard can help an organisation identify its impacts and dependencies on natural capital assets, and associated risks and opportunities, communicate with stakeholders, make more informed decisions and evaluate the impacts and effectiveness of those decisions. Given the Dasgupta review referred to above, the natural capital and biodiversity provisions in the Environment Bill, and the TNFD proposals also mentioned above, this seems to be a very timely publication.

The Environment Agency (EA) has published its latest list of enforcement undertakings accepted in the six months between October 2020 and March 2021. The vast majority of these relate to the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, with others relating to environmental permitting and water pollution breaches.

HSE has published the UK REACH Work Programme, which describes operational work planned for 2021/22. The workplan details the operational activities that HSE, supported by the EA, will undertake and seeks to provide a comprehensive picture of all activities conducted under UK REACH. Within each subject theme, the workplan also provides some early perspectives on work anticipated in future years. HSE’s work will be directed by activities within industry and government, and by specific legislative triggers. The plan reveals that there has been an application for authorisation to use an endocrine disruptor (OPEO) and for the extension to an authorisation for the phthalate DEHP. It also lists a number of substances that will be considered for inclusion as substances of very high concern. Anyone affected by REACH should check this plan and whether it impacts any of their substances. The government has also published [information on transitional applications for authorisation](#) under UK REACH, which has been submitted to DEFRA.

EA and eBay UK joined forces to target vehicle breakers and parts sellers using the marketplace to advertise vehicle parts, including catalytic converters, without the correct environmental permits. A number of vehicle breakers offering illegal car parts have been removed from the eBay marketplace, as part of an education campaign of 20,000 sellers. The clampdown saw 10 traders suspected of selling without the correct permissions in place having their accounts suspended. This led to over half of the sellers then applying for the correct permits. Many traders were unaware that they need a permit or how to correctly dismantle a vehicle, dispose of the hazardous waste, deal with fire risks and the subsequent risk to the environment.



The EA has disclosed initial results of its National Waste Crime Survey. The full report is expected in the next few months, but media reports have summarised the key results of the survey. The issue of most concern was large-scale fly tipping, followed by illegal waste sites. Respondents estimated that just 25% of waste crime incidents were reported to the EA, and the economic impacts of waste crime were cited as a major problem, with 73% of respondents saying they had picked up the financial cost of clean-ups, while 58% experienced disruption to their business. Malcolm Lythgo, Head of Waste Regulation at the EA is reported as saying that “waste criminals show complete disregard for communities and the environment, and they need to know we are ready to take action. Last year, the EA prosecuted nearly 100 individuals and companies for waste crime offences, with fines exceeding £900,000, 28 custodial sentences and £1 million of confiscation orders”.

The EA has again extended a number of COVID-19 related regulatory position statements, allowing derogations from the usual rules and requirements. The following have all been extended to 31 December 2021: Accumulating radioactive waste that you cannot transfer because of COVID-19 (RPS C13); COVID-19 and exceeding permit limits for medical use of radioactive substances (RPS C15); cleansing and PPE waste at a healthcare waste management facility (RPS C1); social distancing when signing and handing over waste transfer and consignment notes in person (RPS C8); and managing lateral flow device (LFD) testing waste (RPS C25).

The Financial Action Task Force (FATF) published a report on money laundering from environmental crime. Environmental crime is one of the most lucrative criminal activities, generating around US\$ 110 billion to US\$ 281 billion in criminal gains each year. This report looks at the methods that criminals use to launder the proceeds of environmental crime. When properly implemented, the FATF recommendations provide effective tools to go after these illicit financial flows. The report highlights the need for countries to assess whether their financial and non-financial sector may be misused to conceal or launder the profits from environmental crimes.

EU

Slovenian Council Presidency outlines sustainability policy priorities. At the start of July, Slovenia will take over the presidency of the EU Institution representing the member states, which rotates every six months. France will follow in that role at the start of 2022. Among the [priorities of the Slovenian Presidency](#) are the effective implementation of the Next Generation EU (NGEU) and the [Recovery and Resilience Facility \(RRF\)](#), which provide overall €750 billion EU funding to help recover from the COVID-19 crisis, with the aim of accelerating the green and digital transition to create jobs and protect the environment. The “Fit for 55 Package” (please see [frESH Law Horizons October 2020](#)) will be among the priorities, under which the Commission will make multiple legislative proposals to achieve a climate-neutral Europe by 2050, including renewable energy, energy efficiency and energy performance of buildings, as well as energy taxation and emissions trading, on 14 July. However, the new Presidency is reportedly realistic about the limited prospects of reaching agreement on the package this year, which another high-ranking Slovenian official characterised as a legislative “tsunami”. The official Presidency programme mentions that COP-26 would provide an additional opportunity for the EU to show its determination and convince the rest of the world that climate action must be taken now.



EU institutions formally adopt Climate Law. Following a political agreement that the [Council](#) and the [European Parliament](#) (EP) reached in April (please see [frESH Law Horizons April 2021](#)), the institutions adopted the Climate Law. It passed the EP with strong support from the major political groups Renew Europe, the European People's Party and the Socialist & Democrats. However, the Greens said the law was not ambitious enough and voted against it, joining the far-right Identity and Democracy group (ID). The Left reportedly also strongly opposed the legislation. In addition to the goal of climate neutrality and an aspirational goal for the Union to strive to achieve negative emissions after 2050, the European Climate Law sets a binding EU target of a reduction of net greenhouse gas emissions (emissions after deduction of removals) by at least 55% by 2030 compared to 1990. In order to ensure that sufficient efforts to reduce and prevent emissions are deployed until 2030, the climate law introduces a limit of 225 Mt of CO₂ equivalent to the contribution of removals to that target. The EU will also aim to achieve a higher volume of carbon net sink by 2030. It tasks the European Commission with proposing an intermediate climate target for 2040, if appropriate, at the latest within six months after the first global stocktake carried out under the Paris Agreement. At the same time, the Commission has the task of publishing an indicative EU greenhouse gas budget for 2030 to 2050, together with its underlying methodology. The Regulation will enter into force after its publication in the Official Journal.

European Commission plans carbon border adjustment mechanism (CBAM) for imports of iron, steel, cement, fertilisers, aluminium and electricity. Ahead of the publication of the “Fit for 55 package,” expected for 14 July 2021, an undated [draft proposal for a regulation on CBAM](#) (including [Annexes](#)) was leaked to the press. Regarding electricity, the draft notes that discussions between Commission services are ongoing on how to address the imports from countries with which the Internal Energy Market is or will soon be coupled. EFTA countries (but not the UK) would be excluded from the scope of the CBAM. Importers would have to seek authorisation from a CBAM authority, buy from that authority and surrender certificates covering their yearly imports. The number of certificates needed would depend on the emissions embedded in the imports, as declared by the importer and verified by an independent certifier. The importer would be allowed to claim a reduction in the number of certificates corresponding to the carbon price paid in the country of origin for the declared emissions. The CBAM authority would calculate the price of those certificates as the average of the closing prices of all auctions of EU ETS allowances conducted in appointed auctioning platforms during each calendar week. The draft discusses a phase-in period starting in 2023 and full implementation from 2026.

Stakeholders comment on Commission plans for REACH and CLP. The European Commission received [325 comments on the REACH inception impact assessment](#) (IIA) and more than [180 on the CLP IIA](#). The IIAs lay out the Commission's plans for the revision of the two major pieces of EU chemicals legislation, implementing the [Chemicals Strategy for Sustainability](#) (CSS; please see [frESH Law Horizons March 2021](#)). Member states, including [Germany](#), [Sweden](#) and Belgium, expressed strong opposition to repealing the authorisation title in REACH. Numerous trade associations commented, including the American Chemistry Council ([ACC](#)), The European Chemical Industry Council ([Cefic](#)), the German *Verband der Chemischen Industrie* ([VCI](#)), [PlasticsEurope](#) and the American Chamber of Commerce to the EU ([AmChamEU](#)).



European Commission proceeds with infringement procedures against 18 member states due to their failure to comply with EU waste law. The Commission [announced](#) that it has issued reasoned opinions urging certain member states to implement EU waste legislation. Member states had to transpose multiple Directives from the 2015 Circular Economy Package into their national law by July 2020. The Commission is pursuing 17 member states for their failure to transpose correctly the amendments to the Waste Framework Directive by Directive 2018/851. The Commission urged 13 member states to correctly transpose amendments to the Packaging and Packaging Waste Directive. Regarding amendments to the Landfill Directive, the Commission is pursuing 13 member states. It further urged seven member states to act regarding certain waste streams (end-of-life vehicles (ELV), batteries and accumulators and waste electrical and electronic equipment (WEEE)). The reasoned opinions that the Commission issued is the second formal step during an infringement procedure when it considers that a member state has failed to fulfil an obligation under the EU Treaties. It follows informal administrative letters and a letter of formal notice, and is the last step before the Commission may refer the member state to the Court of Justice of the European Union, to secure compliance if necessary, including through imposing fines. The Commission has given the member states the standard two months to reply. Despite the fact that not all member states have implemented the changes adopted in 2018, the [Commission has already been revising the Packaging and Packaging Waste Directive](#) again.

European Commission is working on restriction roadmaps. The Commission submitted a [Proposal for a Restrictions Roadmap under the CSS](#) to the [40th Meeting of Competent Authorities for REACH and CLP](#) on 29 June 2021. The roadmap aims to provide the cornerstone for the multi-annual planning under REACH Article 68(1) on restrictions and Article 69(2) on substances on the authorisation list. It would form a “rolling” list, which will be regularly updated, with a time horizon up to 2025-2027, until the generic approach to risk management fully applies. The rolling list would consist of three pools of substances: (1) substances already on the registry of intention for restrictions; (2) substances under consideration for a restriction proposal; and (3) potential restrictions where harmonised classification and labelling or candidate listing are part of the “foreseen regulatory needs” assessed by ECHA along with restriction. The draft roadmap prioritises carcinogenic, mutagenic and reprotoxic substances, endocrine disruptors, persistent, bioaccumulative and toxic substances, immunotoxicants, neurotoxicants, substances toxic to specific organs and respiratory sensitisers for (group) restrictions under REACH. The Commission encourages national competent authorities to actively support the roadmap by working with ECHA and the Commission on preparing restriction proposals. The roadmap does not affect the member states’ right of initiative as regards proposing new restrictions for substances that are not included in the roadmap.

ECHA publishes report on the operation of REACH and CLP. ECHA published its third [report](#) covering five years of operation of these regulations. It addresses the impact of REACH and CLP on health and safety for workers, consumers, environmental protection, functioning of the internal market, as well as innovation and information on possible alternatives methods to animal testing. The report also covers operational aspects, such as dossier preparation and submission, screening and prioritisation, evaluation, harmonised classification and labelling, restrictions, authorisation, safe and sustainable use of chemicals. ECHA addresses the [CSS](#) in the report and welcomes its proposal for the Commission to mandate ECHA to prepare dossiers for harmonised classification. According to the report, REACH and CLP have advanced worker and consumer health and environmental protection, as well as promoted innovation and competitiveness in the EU market. However, the report highlights some room for improvement, including links between the legislation governing chemicals, and companies improving the information that they submit. The report highlights “significant discrepancies” between the data provided as part of the registration process and that provided during public consultations on specific risk management measures.



European Commission amends REACH Annexes to clarify them. In June 2019, the Commission and the European Chemicals Agency (**ECHA**) concluded in the REACH Evaluation Joint Action Plan that the Commission should amend certain provisions of the REACH Annexes to provide more clarity on the obligations of registrants and on the corresponding role and responsibilities of ECHA. The affected Annexes are VII to X (which set out the standard information requirements for registration in different tonnage bands) and XI (the general rules for adaptation of the standard testing regime for those Annexes). Amendments foreseen in Commission [Regulation 2021/979](#) address toxicological information, physicochemical properties, existing data, “weight of evidence”, structural similarity, “substance-tailored exposure-driven testing”, waivers for conducting relevant studies and rules for the adaptation of the standard testing regime. The changes will apply from January 2022. The Commission is also [consulting on another draft Regulation](#), which serves the same general purpose, and will amend parts of these Annexes to align them with the terminology used in CLP Regulation (regarding mutagenicity and aquatic toxicity). The draft is open for comments until 19 July 2021.

The European Commission and the European Committee of the Regions have launched a Zero Pollution Stakeholder Platform to assist with the implementation of the EU Action Plan: “Towards Zero Pollution for Air, Water and Soil”. The Action Plan was adopted on 12 May 2021 and is a key deliverable of the European Green Deal. It sets out an integrated vision for 2050 to reduce pollution to levels that are no longer harmful to human health and natural ecosystems, as well as intermediary targets for 2030, and actions to achieve the objectives. Reducing pollution requires clean choices for regional and urban mobility and energy, investments in buildings and infrastructure, as well as overall spatial planning. All these decisions affect the health and wellbeing of citizens. The platform will help deliver on initiatives and actions in the plan by bringing together actors from different communities and areas of expertise to tackle inter-related challenges, defining a common vision on how to achieve zero pollution objectives, and developing and sharing good practices.

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