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# frESH Law Horizons

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## UK

**Publishing details of a criminal investigation before charge infringed privacy.** [The Supreme Court has ruled](#) that an article by a global news agency, reporting that a criminal investigation by a UK legal enforcement body was being brought against the respondent, breached their reasonable expectation of privacy. Dismissing the appeal, the Supreme Court's ruling confirms that, prior to being charged, a person under criminal investigation has a reasonable expectation of privacy in respect of information that relates to that investigation. Otherwise, there could be a negative effect on an innocent person's reputation. Claims for a breach of the reasonable expectation of privacy can be brought in tort, specifically the tort of the misuse of private information. This case could be relevant to the prosecution of individuals in health and safety and other regulatory cases, for example company directors.

**Civil Aviation Authority (CAA) successfully prosecutes six COVID-19 offences.** [The CAA prosecuted](#) a Romanian airline at Uxbridge Magistrates' Court for six separate COVID-19 offences. Five of the offences related to failures to ensure that passengers had completed the required Passenger Locator Form when arriving at Heathrow Airport. One further offence related to a failure to ensure an arriving passenger had evidence demonstrating that they had completed a pre-departure COVID-19 test. The action followed the issue of fixed penalty notices in connection with the alleged offences, which had not been paid or resolved. This is the first prosecution of an airline under COVID-19 Regulations, which gave the CAA new enforcement powers to ensure airlines check passengers for compliance with the COVID-19 rules for international travel.

**Draft Online Safety Bill amended to create new communications offences.** The government has [announced](#) that it has amended the Bill to create three new offences, namely 1) sending or posting a false communication while knowing it to be false, intending to cause non-trivial emotional, psychological or physical harm; 2) A harm-based communications offence to capture communications sent to cause harm without a reasonable excuse; and 3) sending a threatening communication while intending or being reckless as to whether the threat would cause fear. There are also new categories of criminal content that user-to-user services and search engines must take measures to identify and remove, including the sale of illegal drugs or weapons; however, the details of the categories are not yet clear.

**Discount for guilty plea dependent on the stage at which a lesser or different offence that was charged became clearly identifiable.** [The Court of Appeal decided](#) that it cannot be assumed that a defendant will inevitably be entitled to full credit for that guilty plea, whenever a lesser or different offence is charged in the course of proceedings and he immediately pleads guilty to it. The Court stated that: "the sentencer should consider, on a fact-specific basis, at what stage the lesser or different offence was clearly identified as an allegation forming part of the prosecution case. If the eventual guilty plea is to an offence which was a permissible alternative verdict on the indictment as charged, then the lesser offence will have been identified as part of the prosecution case from the outset." In such a case, the defendant must have indicated a guilty plea to that lesser or different offence at the first stage of the proceedings to benefit from the full one-third reduction. This case serves as a reminder that defendants should seek to identify permissible alternative verdicts on the indictment charged and consider what plea to enter in respect of each of them, in order to ensure the maximum reduction they can obtain is in fact obtained, if they will plead guilty.



**Guidance on achieving best evidence in criminal proceedings published by the National Police Chief's Council (NPCC).** [The Guidance](#) includes good practice for interviewing victims, witnesses and use of special measures. The NPCC had not updated this guidance since 2011. While not legally enforceable, significant departures from the Guidance by police or other regulators will risk evidence being ruled inadmissible by the Court under the Police and Criminal Evidence Act 1984. The Guidance may also be useful to businesses (and their representatives) if they will collate their own evidence in respect of a regulatory or criminal investigation, or if they wish to provide guidance to employees in relation to the process that will likely be adopted by investigators.

**Judge's sentencing indications amounted to inappropriate pressure.** [The Court of Appeal has determined that](#) a judge's unsolicited indication as to sentence was "so generous that the offer was irresistible to any defendant, whether guilty or not, or at least it operated to apply inappropriate pressure so that the pleas should not be regarded as truly voluntary." The judge in the case ([\[2021\] EWCA Crim 1959](#)) had indicated that all sentences would be suspended, which failed to comply with the procedure set out in *R v. Goodyear* [2005] EWCA Crim 888, and counsel had allowed this to happen. All 15 counts on the trial indictment were, therefore, quashed and a retrial was ordered. This case shows that where a defendant subsequently considers that sentencing remarks have pressurised them into pleading guilty, this may be a legitimate ground for appeal.

**National Highways will not face a corporate manslaughter charge over M1 "smart motorway" death.** South Yorkshire's Temporary Assistant Chief Constable, in consideration of advice from the Crown Prosecution Service (CPS), found that National Highways "did not owe road users a 'relevant duty of care' under the terms set out in the Corporate Manslaughter and Corporate Homicide Act 2007." At a pre-inquest review, the Coroner for South Yorkshire had suggested that National Highways should be referred to the CPS to consider if manslaughter charges were appropriate. The government had previously separately [announced](#) that it is halting the expansion of smart motorways until five years of safety data is available. The Corporate Manslaughter and Corporate Homicide Act 2007 sets out the meaning of a "relevant duty of care" within the context of the legislation, in relation to an organisation, as including any of a number of specified duties under the law of negligence. It is not clear why National Highways were not considered to be within the scope of this meaning.

**Standard national goods vehicle operator's licence refused on grounds of repute.** The Traffic Commissioner for the East of England found at a [public inquiry](#) that an applicant had already started operating HGVs, despite providing an assurance in August 2021 that it would not do so, and refused their application on the grounds that the company lacked the required good repute. The Commissioner also took into account that significant people within the company had been strongly criticised by a liquidator of a previous company for hampering their investigation into whether the company traded improperly before entering liquidation. This case serves as a reminder of the importance of conduct and good repute for operators of goods vehicles and that operations must not be started before a licence is granted.

**Company fined £1.5 million following death of electrician who fell from a crane platform.** The HSE have [reported](#) on the fine for a company, which was found to have failed to maintain the walkway access panels. The HSE said there was no evidence of any steps being taken to ensure that the panel was safely replaced following an earlier weld repair. The company was found guilty of breaching Sections 2(1) and 3(1) of the Health & Safety at Work etc. Act 1974, Regulation 5(1) of the Provision and Use of Work Equipment Regulations 1998, and Regulation 8(b)(i) of the Work at Height Regulations 2005.



**The Office for Product Safety and Standards (OPSS) Publishes Enforcement Data.** The OPSS has published details of its enforcement actions during the six months from 1 April 2021 to 30 September 2021. Actions related to product safety included orders for forfeiture and destruction, compliance notices and the issue of mandatory withdrawal and recall notices. Relevant businesses included businesses based in Great Britain, but also a significant number of online sellers based in China. The data shows that the actions related to breaches of the General Product Safety Regulations 2005 and also, in some cases, of specific legislation relating to electrical equipment and toys. In addition to product safety, there was enforcement action taken in relation to heat networks and timber.

**Case against the Food Standards Agency (FSA) is dismissed – FSA is authority on whether meat is “fit for human consumption”.** The FSA has reported that after a seven-year legal case, [the Supreme Court dismissed](#) the case against the FSA in which two applicants for judicial review asserted that a right of appeal against a decision of the FSA’s Official Veterinarian should exist, either under the Section 9 of the Food Safety Act 1990 or by other means. The case was originally heard in the High Court and then the Court of Appeal; where on both occasions the applications were dismissed. Now, the Supreme Court has made the final ruling on the issue. It found that Section 9 Food Safety Act 1990 procedure could not be used as a right of appeal against the Official Veterinarian and that judicial review is the effective means on legal redress should a party wish to challenge such a decision. Businesses should note that they may, therefore, still challenge a decision of the FSA via judicial review; however, the test for judicial review sets a high bar meaning that it will likely be difficult to reverse a FSA decision.

**FSA launches campaign to highlight requirement for food business establishments to be registered.** The FSA has [announced](#) the campaign on its website. It is, of course, already a legal requirement to register any establishments where food operations are carried out, under the provisions of the retained EU General Food Law Regulation (EU) 178/2002, as implemented in the UK. Registrations are made to the relevant local authority where the establishment is situated and should be updated when the operator of the establishment changes. However, the new campaign appears to be particularly motivated by the set-up of numerous businesses from home during the COVID-19 pandemic.

**Report on the safe use of driverless automated vehicles published by the Law Commission.** [The Report and accompanying documents](#) make recommendations on “initial approval and authorisation of self-driving vehicles, ongoing monitoring of their performance while they are on the road, misleading marketing, and both criminal and civil liability.” The Report sets out a proposed new system of legal accountability once a vehicle is authorised by a regulatory agency as having self-driving features. Under these proposals, a person in the driving seat would be legally considered to be a “user-in-charge” rather than a driver, and a user-in-charge would not be liable for offences that arise directly from the driving task such as dangerous driving or exceeding the speed limit. Instead, the “Authorised Self-Driving Entity” that had the vehicle authorised would be liable for criminal or unsafe driving, and would therefore be open to regulatory enforcement action. The user-in-charge would, however, retain duties such as for insurance and checking vehicle loads. In addition, some vehicles may be authorised without there being a user-in-charge, in circumstances where nobody is in the driver seat, and all the occupants of the vehicle would be passengers who would have no liability at all; responsibility for the vehicle’s journey would lie with a licensed operator. The Report has been laid before Parliament and the Scottish Parliament, and the UK, Scottish and Welsh governments will decide whether to accept its recommendations and introduce new legislation accordingly.



**Local Council takes tenants that refuse fire smoke detector repairs to Court.** In an unusual case, Kirklees Council had issued a warning last year that it was trialling whether it could file injunctions to force people to let housing staff into their Council properties to carry out fire safety improvements. The Council sought to carry out fire safety improvements in three blocks of flats and a small number of tenants refused access. The Council has [reported](#) that four warrants were issued by magistrates, allowing entry to Council flats so urgent repairs to smoke detectors could be carried out. This is the first time a Council has successfully done this in relation to fire safety measures; however, there are [reports](#) of another Council (Havering) having taken similar action for properties where Gas Safety Certificates had not been produced. Although both reports are restricted to action taken against local authority tenants and, therefore, unlikely to be of wider application to businesses, they do demonstrate the focus on fire safety by local authorities since Grenfell.

**The Intergovernmental Panel on Climate Change (IPCC) released its latest report.** [Climate Change 2022: Impacts, Adaptation and Vulnerability. Working Group II Contribution to the IPCC Sixth Assessment Report](#) assesses the impacts of climate change, looking at ecosystems, biodiversity and human communities at global and regional levels. It also reviews vulnerabilities and the capacities and limits of the natural world and human societies to adapt to climate change. The full report is over 3,000 pages. The report finds that since the fifth IPCC Assessment Report, published in 2014, a wider range of impacts can be attributed to climate change, and climate change impacts are expected to intensify with additional warming. Climate change risks and impacts can be reduced, within limits, if humans and nature adapt. However, the report identifies large gaps between ongoing efforts, and adaptation needed to cope with current levels of warming, and that adaptation requires urgent, more ambitious and accelerated action and, at the same time, rapid and deep cuts in greenhouse gas emissions. The report focusses on solutions, highlighting the importance of fundamental changes in society at the same time as conserving, restoring and safeguarding nature in order to meet the Paris agreement and the UN sustainable development goals.

**Department for Business Energy and Industrial Strategy (BEIS) issues guidance on mandatory climate-related financial disclosures.** The guidance is for all companies and LLPs affected by the new disclosure requirements for financial years starting on or after 6 April 2022, under the [Companies \(Strategic Report\) \(Climate-related Financial Disclosure\) Regulations 2022](#) and the [Limited Liability Partnerships \(Climate-related Financial Disclosure\) Regulations 2022](#). The guidance contains an overview of the regime, and sections on its scope and timing, as well as setting out detail on the reporting requirements under both regimes. It contains guidance on how the new requirements interact with other regulations in this area, including the Financial Conduct Authority (FCA) requirements for disclosures against the Task Force on Climate-related Financial Disclosures (TCFD) recommendations and recommended disclosures, and existing requirements on Streamlined Energy and Carbon Reporting (SECR).

**Office for Environmental Protection (OEP) published its formal complaints procedure, and extends remit to Northern Ireland.** Under the Environment Act 2021, a person may make a complaint to the OEP if they believe that a public authority has failed to comply with environmental law. This document contains the procedure you must follow to make a complaint to the OEP. The document includes details of the criteria established in the Environment Act for complaints, and the applicable time limits. It describes how OEP deals with complaints, detailing the six stages of the complaints process. Separately, the Northern Ireland Assembly has given its approval for the OEP to become the independent environmental oversight body for Northern Ireland. OEP's role in Northern Ireland starts on Monday, 28 February.



**Plastic Packaging Tax (PPT) principal regulations made.** Following on from our updates in December and January, [The Plastic Packaging Tax \(General\) Regulations 2022 \(SI 2022/117\)](#) were made on 8 February 2022 and come into force on 1 April 2022. The tax aims to provide an economic incentive for businesses to use recycled plastic in the manufacture of plastic packaging. The Regulations detail when a plastic component becomes chargeable, and how to calculate the plastic and recycled plastic content of a packaging component. They address a number of taxpayer obligations around returns, registrations, evidence requirements, tax credits and the repayment of overpaid tax. The Regulations also set out the provisions on joint and several liability, secondary liability and applications for group treatment. The Regulations are supplemented with an [explanatory memorandum](#). HMRC aims to evaluate the environmental impact of the tax after at least one year of monitoring data.

**HSE reminds UK biocidal active substance and product suppliers to take action.** Following the end of the Brexit transition period on 31 December 2020, UK-based biocidal active substance suppliers who were included on the EU "Article 95 List" were automatically added to the GB Article 95 List. The Article 95 List is a list of approved (or pending approval) biocidal active substances, and only suppliers on this list can supply such substances. A recent [HSE bulletin](#) reminds suppliers that if they wish to remain on the GB Article 95 List after 31 December 2022, they must [resubmit their data or letter of access to HSE and confirm to HSE that they \(or their representative\) are established in the UK](#). Suppliers that fail to complete both actions by 31 December 2022 will be removed from the GB Article 95 List, meaning that products containing their active substances cannot be supplied in GB. As well as being an important reminder for active substance suppliers, this is also important for biocidal products suppliers, because their active substance supplier must be on the GB list. Biocidal product suppliers are, therefore, advised to check with their active substance supplier that all necessary actions are being taken.

**National Audit Office (NAO) announces review of government's approach to waste crime and local air quality breaches.** The government's approach to waste crime is set out in its Resources and Waste Strategy, published in December 2018, which built on the findings of an independent review that same year. The NAO's [investigation](#) will respond to concerns raised by MP's about government oversight of the waste industry and the action taken to address illegal activity. The investigation will examine the landscape of waste crime in England, data on the prevalence of waste crime, and assess progress since the 2018 Strategy. Alongside this, in Summer 2022, the NAO will launch a [study](#) into how the government is tackling air quality breaches in the UK. Under the government major projects portfolio, the government aims to tackle NO2 breaches through measures led by Local Authorities and National Highways. These measures include bus retrofit schemes, speed restrictions and clean air zones. The study will consider the extent to which the government expects to achieve its clean air objectives, and whether the programme to tackle breaches of air quality limits is well set up. It will also scrutinise the progress government has made and the cost so far, and how the government is managing ongoing risks to tackling local breaches of air quality.



**Government publishes UK provisional framework for regulating chemicals and pesticides.** The Department for Environment, Food and Rural Affairs (DEFRA) published a [command paper](#) setting out how the UK government and devolved governments propose to work together post-Brexit to regulate chemicals and pesticides. The paper considers policies and regulations relating to biocidal products; classification, labelling and packaging; detergents; persistent organic pollutants; plant protection products; prior informed consent; mercury; and UK-REACH. The paper, which sets out a Framework Outline Agreement and Concordat, addresses the operational/policy responsibilities of regulators including the Health and Safety Executive and the Environment Agency. Some of these responsibilities derive from legislation while some are delegated via agency agreements. The paper highlights a consensus among government departments and public bodies on the need for a UK-wide framework for chemicals regimes to support engagement between the central and devolved governments/departments to ensure the functioning of the UK internal market while acknowledging policy divergence. The concordat covers working arrangements and shared principles.

**Government publishes provisional common framework on UK air quality.** The [provisional framework](#) published by DEFRA sets out how the UK government and devolved governments will work together on policies that aim to reduce harmful emissions and concentrations of air pollutants. The aim of the framework is to maintain common standards to improve air quality and develop a better understanding of the sources and impacts of emissions and air pollutants, in line with current and future obligations. The framework retains a number of EU air quality laws, including ambient air quality, national emissions ceilings, industrial emissions, medium combustion plants and sulphur content in certain liquid fuels. The framework will be UK-wide and in line with the UK's current international obligations. The paper explains where common rules will and will not be required, how the framework will operate in practice, the planned roles and responsibilities shared between DEFRA and the devolved governments, and how implementation of the framework will be monitored and enforced.

**Government publishes provisional common framework on UK ozone depleting substances (ODS) and fluorinated greenhouse gases (F-Gas).** DEFRA published a [command paper](#) on how the UK central government and devolved governments plan to work together to regulate ODS and F-Gas. The paper, which sets out a provisional Framework Outline Agreement and Concordat, refers both to the retained EU regulations, as well as national enforcement regulations, on ODS and F-Gas. The requirements include registries, reporting, licensing and allocation of quotas. The framework explains the respective responsibilities of DEFRA and the devolved governments, how they will take decisions together, as well as the monitoring and enforcement process for this framework and how it will be reviewed and updated.

**Government publishes provisional UK common framework on best available techniques (BAT) for industrial emissions.** DEFRA published a [command paper](#) setting out a provisional Framework Outline Agreement and Concordat between the UK government and devolved governments on developing and setting UK best available techniques (UK BAT) for emissions from industrial installations. Following a consultation in January 2021, this framework addresses pollution from industry, by reducing emissions to air, water and land. BAT standards for installations covered by the Industrial Emissions Directive were previously developed at EU level, but the UK needs to develop its own BAT standards post-Brexit. This new agreement sees the establishment of a UK BAT Standards Council, a regulators group and technical working groups for each new UK BAT standard.



**Independent Review of Great Britain invasive non-native species strategy published.** The [review](#) gathered stakeholder views on the implementation of the 2015 strategy on behalf of DEFRA, and in liaison with the Scottish and Welsh governments. It found that progress has been made towards all aims of the 2015 strategy, with notable achievements including a move away from individual species and towards pathway management, the continued role for the Non-Native Species Information Portal for increasing vigilance, awareness raising through targeted campaigns, and collaboration with stakeholders and neighbouring states within the broader biosecurity agenda. The review recommendations included greater acknowledgement of complementary environmental strategies, a drive to implement all pathway action plans under the next strategy, and the need for a concerted effort to control established invasive non-native species (INNS) populations, including the identification of priority sites. The strategy was last updated in 2015 with aims and objectives to 2020. The review will inform an update of the strategy, which is due to be published by the end of 2022.

**The government has published its [strategic policy statement for Ofwat](#).** This sets out the government's priorities for Ofwat's regulation of the water sector in England, and Ofwat must carry out its functions in accordance with this statement. The draft strategic policy statement was laid in Parliament on 2 February 2022. Subject to Parliament's views the statement will be published after 40 days. The government consulted on the draft statement last year and recently published its [response](#). The four strategic priorities identified in the consultation (protecting and enhancing the environment; a resilient water sector; serving and protecting customers; and driving markets to deliver for customers) were widely supported, particularly the objectives of protecting and enhancing the environment. Announcing the policy, the government minister commented on the "clear expectation that Ofwat should prioritise action by water companies to protect the environment and deliver the improvements that we all want to see. I have been very clear of my expectations of water companies and where they do not step up we will take robust action".

**Cambridge Water responds to allegations regarding PFOS contamination of drinking water.** Press reports of [high levels of toxic chemicals found in Cambridgeshire water supply](#) appeared earlier this month. These linked a water source used by Cambridge Water at Duxford Airfield site to PFOS compounds. However, it appears that the quoted data is from a 2008 report, and Cambridge water states that this water has never been used in its raw form as a supply to home, but has been blended with other water to ensure it reached necessary guidance thresholds set by the [Drinking Water Inspectorate](#) (DWI). Cambridge Water also announced that very recent sampling in February 2022 has shown that "[meets the highest possible quality category for PFOS and confirms it is safe to drink](#)".



**DEFRA requests comments on draft risk management evaluations for two persistent organic pollutants (POPs).** The UK is a party to the Stockholm Convention on POPs, which are substances that persist in the environment, accumulate in living organisms and pose a risk to our health and the environment. POPs listed in the convention are generally prohibited, subject to limited exemptions. The POPs Review Committee (POPRC), the technical scientific committee of the Stockholm Convention, considers and further develops the evidence that a substance demonstrates POP characteristics. If there is evidence that it is a POP, they then consider the socio and economic impacts of a ban or restriction and make recommendations to the Stockholm Convention Conference of Parties, which is held every two years. The POPRC has agreed Risk Profiles (Annex E) for the UV-328 and Dechlorane Plus and is now developing the Risk Management Evaluations (Annex F) that provide information on the social and economic impacts of any control measures under consideration for this substance. Information is, therefore, requested on production, use, emissions, monitoring, alternatives, impacts on society, efficiency and efficacy of proposed control measures, costs and waste disposal. All information should be provided in the [Annex F](#) form available on the Stockholm Convention's website and sent to DEFRA by 7 March 2022.

**United Nations negotiators have agreed a roadmap for a global plastic treaty.** At the resumed fifth session of the [UN Environment Assembly](#) (UNEA), in Nairobi, Kenya, the UN member states are seeking to progress discussions on addressing the challenge of plastic pollution, including plans for the first global agreement to tackle plastic pollution. Reuters reports having seen "a draft resolution, in what delegates said was a key step to agreeing an ambitious deal." In an [interview ahead of the talks](#), the executive director of UNEP expressed confidence "that member states will decide on the path forward that makes a real difference to address plastic pollution".

## EU

**European Commission presents controversial rules on the sustainability of nuclear and gas.** The Commission [presented](#) a [Taxonomy Complementary Delegated Act \(CDA\)](#) on climate change mitigation and adaptation covering certain gas and nuclear activities. Taxonomy Regulation 2020/852 provides that for the purpose of establishing the degree to which an investment in an economic activity is environmentally sustainable, that economic activity must (1) contribute substantially to one or more of six environmental objectives: (i) climate change mitigation; (ii) climate change adaptation; (iii) sustainable use and protection of water and marine resources; (iv) transition to a circular economy; (v) pollution prevention and control; and (vi) protection and restoration of biodiversity and ecosystems; (2) not significantly harm any of these objectives; (3) be carried out in compliance with minimum social safeguards; and (4) comply with technical screening criteria. The CDA sets conditions for considering certain nuclear and gas activities as transitional activities in the Taxonomy. Transitional activities are those that cannot yet be replaced by technologically and economically feasible low-carbon alternatives, but do contribute to climate change mitigation and with the potential to play a major role in the transition to a climate-neutral economy. The CDA includes three natural gas activities, and three nuclear activities. The CDA is expected to apply as of 1 January 2023 (assuming neither the Council nor the European Parliament object). Environmental NGO ClientEarth has already [said](#) that it will consider legal action if fossil gas-based activities are finally included in the EU Taxonomy as transitional activities.



**NGOs challenge Taxonomy criteria for biomass, bio-based plastics and chemicals.** Environmental NGO ClientEarth also [announced](#) that it has filed a [request for internal review](#) of the Climate Delegated Act on taxonomy technical screening criteria (TSC) with the European Commission, challenging the TSC for biomass, bio-based plastics and chemicals used to make plastics. The Climate Delegated Act, adopted in June 2021 and applicable since January 2022 (see [Sustainability Outlook January 2022](#)) provides TSC for bioenergy, bio-based plastics and chemicals used to make plastics to be considered as activities that “contribute substantially to climate change mitigation or adaptation” and do no significant harm to the environment. A coalition of seven NGOs, supported by another 50 in an [open letter](#), also filed a [request for internal review](#) to the same act as regards the labeling of certain bioenergy and forestry activities. The Commission has 16 weeks to reply from the date on which it received each request. If it does not remedy the issues presented in the requests, the NGOs may challenge that decision before the Court of Justice of the European Union.

**Five member states propose options for the revision of EU packaging rules.** Austria, Denmark, Luxembourg, the Netherlands and Sweden sent a [joint letter](#) with [policy options](#) on the [revision of the Packaging and Packaging Waste Directive](#) to the European Commission. They agree that the upcoming revision “should follow the waste hierarchy and therefore focus on prevention, re-use, recycling, and the use of recycled content.” Regarding prevention, they call for clear and ambitious reduction targets while preventing “light-weight” packaging, and packaging design criteria to apply regardless of the materials, as well as mandatory re-use targets for specific product groups. Mandatory minimum post-consumer recycled content requirements in certain plastic packaging should be accompanied by determination methods, including mass balance. In addition, the member states want the Commission to (at least) study the need to expand separate collection (taking into account member states’ existing waste infrastructure), and to foster eco-modulation of extended producer responsibility (EPR) fees. They urge the Commission to establish better rules and controls regarding imported packaging. After having postponed this multiple times, the Commission is [tentatively planning](#) to adopt its proposal on 21 July 2022.

**European Commission to request standards for plastic recycling and recycled plastics.** A [draft standardisation request](#) of the Commission to the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (CENELEC) addresses plastics recycling and recycled plastics in support of the implementation of the [EU Plastics Strategy](#). The requested standardisation work should focus on the recyclability and design-for-recycling of plastic products; the characterisation and classification of the quality of sorted plastics wastes; and the characterisation and classification of the quality of recycled plastic materials. The request provides a list of 10 new European standards and European standardisation deliverables to be drafted, as well as a list of 11 existing standards to be revised. If they accept the standardisation request, CEN and CENELEC would have 36 months from their notification to adopt the standards. NGOs (ECOS, the Rethink Plastic alliance and ZWE) have opposed the current standardisation procedure and sent a [letter](#) to the Commission to draw their attention to what they call the questionable and opaque role of the CPA in the preparation phase of the draft standardisation.



**European Commission consults on “unintentional” microplastics releases.** Following its call for evidence on reducing the amount of unintentionally released microplastics in the environment and stakeholder consultation (please see [Sustainability Outlook September 2021 and December 2021](#)), the Commission [launched](#) a public consultation in the form of an online survey. The consultation focuses on plastic pellets, synthetic textiles and tyres as the sources known to release the largest quantity of microplastics, but also paints, geotextiles and detergent capsules, which were identified as additional sources during the stakeholder consultation. The Commission asks about numerous different measures, including restrictions of synthetic fibres for certain applications or those with high releases of microplastics, the placing of a filter in washing machines, tyre design in order to reduce abrasion, a common system to monitor and report microplastics releases along the life cycle, and EPR. The consultation is open until 17 May 2022. The Commission plans to propose a regulation in Q4 2022.

**European Commission proposes rules on supply chain due diligence.** The Commission adopted a [proposal](#) for a directive on corporate sustainability due diligence, and presented a [communication on decent work worldwide](#). As [stated](#) by the Commission, the proposal aims at fostering sustainable and responsible corporate behaviour throughout global value chain. Companies would be required to identify and, where necessary, prevent, end or mitigate adverse impacts of their activities on human rights and on the environment. The new rules on due diligence intend to improve at a larger scale the national rules introduced by some member states (e.g. Germany) and the voluntary action taken by companies. The proposed rules apply to EU limited liability companies above certain thresholds (over 500 employees and €150 million in net turnover worldwide; or over 250 employees and a €40 million net turnover worldwide when at least 50% of the turnover was generated in high impact sectors). For non-EU companies, the same turnover threshold applies if generated in the EU. High impact sectors include textiles, agriculture, forestry, fisheries and food, and mineral resources. Small and medium enterprises (SMEs) are out of the scope of the proposal but may be indirectly affected by accompanying measures. The proposal applies to the companies’ own operations, their subsidiaries and their value chains. Companies in scope would need to take appropriate measures (“obligations of means”) in light of the severity and likelihood of different impacts, the measures available to the company in the specific circumstances, and the need to set priorities. Companies over €150 million would also need to have a plan to ensure that their business strategy is compatible with the Paris Agreement (limit global warming to 1.5 degrees). The proposal empowers the Commission to adopt guidance on model contract clauses, as well as on how companies should fulfil their due diligence obligations, including for specific sectors or specific adverse impacts. Victims would be able to take legal action for damages that could have been avoided with appropriate due diligence measures. Directors would have the duty to set up and oversee the implementation of due diligence and to integrate it into the corporate strategy. The proposal foresees the standard general transposition period of two years. The rules on companies with a net turnover over €40 million from high impact sectors would start to apply four years from the entry into force of the Directive.



**European Commission starts initiative on the certification of carbon removals.** The Commission [launched](#) a call for evidence for an impact assessment on the certification of carbon removals, as well as a [public consultation](#) in the form of an online questionnaire. The Commission foresaw this initiative in its communication on sustainable carbon cycles (please see [Sustainability Outlook December 2021](#)). The Commission plans to support achieving its climate objectives by removing, recycling and sustainably storing carbon. Specifically, its aim is to expand sustainable carbon removals and encourage the use of innovative solutions to capture, recycle and store CO<sub>2</sub> by farmers, foresters and industries. It wants to develop a regulation on certifying carbon removals, including on monitoring, reporting and verifying the authenticity of the removals. The call for evidence does not provide much detail on policy options. The certification framework should identify the types of carbon removals to consider and set robust requirements, and ensure environmental integrity, in particular with regard to the EU's ambition to reverse biodiversity loss and pollution. The public consultation's questionnaire asks stakeholders about: (1) the potential scope of the certification framework; (2) the benefits of a certification framework to scale up high-quality carbon removals over the coming years; (3) the role of the EU in the certification of carbon removals; and (4) certification methodologies. In parallel, the Council made available [draft conclusions](#) reacting to the Commission's communication. The [feedback period](#) and the [public consultation](#) is open until 2 May 2022. The Commission expects to adopt the regulation in the Q4 2022.

**European Parliament Rapporteur proposes to include waste incinerators in EU Emissions Trading System (ETS).** In his [draft report](#) on a revised ETS, the Rapporteur of the Committee for Environment, Public Health and Food Safety (ENVI), proposes to include municipal waste incinerators in the ETS by 2028, contingent upon an impact assessment to be conducted by the Commission. The Rapporteur explains the importance of all emitters being subject to a carbon price, which would also incentivise recycling, reuse and other waste management options in line with circular economy, but that care is required to avoid large-scale deviation of waste from waste incineration towards landfills and exports to third countries, with a potentially hazardous impact on the environment. The Rapporteur also supports the overall net 55% target for 2030 put forward by the European Commission (please see [Sustainability July 2021 and January 2022](#)). He proposes additional measures to support innovation and carbon leakage protection, including a bonus-malus system to determine the share of free allocation. The report addresses the link between the ETS system and the proposed carbon border adjustment mechanism (CBAM; please see [Sustainability Outlook June 2021 and July 2021](#)) with the introduction of a temporary carbon leakage protection reserve to fill any possible gaps in the protection against carbon leakage, while avoiding double protection. Each year, the free allocation no longer provided to the CBAM sectors would be moved into such reserve. Where a yearly assessment by the Commission finds that the CBAM has been effective, the allowances in the reserve from the preceding year would automatically be auctioned and the revenues would accrue to the Innovation Fund. Where the assessment is negative, the allowances in the reserve from the preceding year would automatically be released back to industry. The ENVI Committee is provisionally scheduled to consider further amendments on 14 March.



**European Parliament report proposes that portable batteries must be removable.** Members of the ENVI Committee adopted the [report](#) on a new Batteries Regulation (please see [Sustainability Outlook January 2022](#)). Proposed amendments to the Commission proposal include the requirement for portable batteries (including batteries for light means of transport) to be designed for “easy and safe removal and replacement” by end-users or independent operators by 2024. The report observes that batteries used for traction in e-bikes and e-scooters, have not been clearly classified as batteries under the current directive, and constitute a significant part of the market due to their growing use. Therefore, it foresees a new definition of “light means of transport battery” as “any battery in wheeled vehicles that can be powered by the electric motor alone or by a combination of motor and human power, including vehicles exempted from type-approval legislation or vehicles of type-approved categories [provided for in Regulation 168/2013] and with a weight below 25kg”. The report also foresees new due diligence obligations for the battery industry and more ambitious collection targets for portable batteries. The Plenary of the Parliament is expected to adopt the report in March. Meanwhile, the Council – as the other EU co-legislator – reportedly made some progress discussing the proposed regulation. A compromise text (not yet publicly available) proposes changes to the definition of batteries and to the timespans for implementing a number of provisions, including carbon footprint declarations. It also includes a separate classification for batteries used in “light means of transport”, which is similar to the one proposed by the report of Parliament, adding that the battery should be sealed. Once both the European Parliament and Council have finalised their position, trilogue negotiations will start.

**European Commission starts revision of the rules on hazardous substances in electrical and electronic equipment (RoHS).** The Commission opened a [call for evidence](#) on the impact assessment (i.e. legislative roadmap) on Directive 2011/65 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS). One area of focus is trying to simplify the RoHS Directive and improve the exemption and restriction criteria and process. The Commission will also explore transforming the RoHS Directive into a regulation or repealing and incorporating it into the REACH Regulation. Following a repeal of the RoHS Directive, sustainable products legislation (in the context of the [Sustainable Products Initiative](#)) could include requirements related to the environmental recovery and disposal of electrical and electronic waste. Stakeholders may provide feedback until 14 March 2022. The Commission plans a public consultation for Q1 2022, with a view to adopt the legislative proposal in Q4 2022.

**ECHA presents restriction proposal for PFAS in firefighting foams.** After announcing that it would take this step in January, the European Chemicals Agency (ECHA) presented a [proposal](#) for an EU-wide restriction on all per- and polyfluoroalkyl substances (PFAS) in firefighting foams (please see [Sustainability Outlook January 2022](#), [Sustainability Outlook July 2021](#)). It aims at preventing further groundwater and soil contamination and health risks for people and the environment. The proposed restriction includes bans on placing on the market, use and export of PFAS-containing firefighting foams and a concentration limit for PFASs in foams, with differentiated transition periods for specific applications (up to 10 years in the case of major accident hazard industrial sites covered by the Seveso III Directive). If adopted, the restriction could reduce emissions of PFAS into the environment by more than 13,000 tonnes over 30 years. A six-month consultation is planned to start on 23 March 2022. ECHA’s scientific Committees for Risk Assessment (RAC) and Socio-Economic Analysis (SEAC) will start assessing the proposed restriction. The combined opinion of the two committees is expected in 2023. Based on ECHA’s proposal, the opinion of its committees, as well as the Commission’s REACH Committee, the Commission will take the decision on the restriction and its conditions. In parallel, five European countries (The Netherlands, Germany, Denmark, Sweden and Norway) plan to submit their [restriction proposal that will cover all PFAS in other uses](#) in January 2023 (after moving this dossier submission from July 2022, please see [Sustainability Outlook July 2021](#)).



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