

frESH Law Horizons

October 2022





UK

Increased Regulatory Exemptions for Smaller Businesses Announced by the Government. On 2 October, the government announced plans to widen the exemptions for small businesses from certain regulatory requirements when considering new laws. The current assumption when formulating new policy is that a business could be exempt if it has “fewer than 50 employees.” However, the announcement indicates that the starting point will now be “fewer than 500 employees” for all new regulations under development from 3 October, as well as those under current and future review (including retained EU laws). This could have a wide-ranging impact, especially given the changes to retained EU law if the Brexit Freedoms Bill is passed (which we covered in last month’s [frESH newsletter](#)). The government is also considering consulting on extending the threshold to businesses with fewer than 1,000 employees, once the impact of this extension is known.

Employment Appeal Tribunal (EAT) Reaffirms That Legal Privilege Does Not Act Retrospectively. The EAT held in the case of [University of Dundee v. Chakraborty \[2022\] EAT 150](#) that legal privilege would not apply retrospectively to an original copy of a grievance report, on the basis that it was not created in contemplation of litigation, but instead as part of an investigative response to a grievance brought under an internal policy. The original report was produced by an academic member of staff on behalf of the employer. Legal privilege issues arose because the original report had been reviewed by external legal advisors prior to disclosure, following which, several revisions were made. The employer sought to only disclose the revised report on the basis that the original report was covered by privilege, however the court found it not to be, as it was not produced in contemplation of litigation. Although this case was in respect of an employment matter, it acts as a reminder of the importance of understanding the correct application of legal privilege more widely, including in relation to regulatory investigations.

Sentencing Council to Consult on its Totality Guidance. On 5 October 2022, the Sentencing Council [announced](#) it is launching a consultation on proposed changes to its totality guidelines. The Council is proposing to give greater prominence to guidance on how the courts can achieve a just and proportionate sentence, and to bringing the guideline up to date to reflect changes in case law, following [research](#) it conducted last year. Under the current guidance, when a court is considering the sentencing of multiple offences, it should pass a total sentence which reflects all the offending behaviour and that is just and proportionate. The Council acknowledges that simply stacking single sentences is not necessarily just and proportionate for multiple offences. Therefore, courts are encouraged to address the offending behaviour, together with the factors personal to the offender. The totality principle is particularly relevant where there has been a continuing breach, or multiple breaches, of legal requirements (such as in health and safety/environmental cases), so clearer guidance should be relevant to corporate defendants, as well as individual offenders.

Chocolate Manufacturer Fined £800,000 for Injury to a Factory Worker. [According to the HSE](#), the company had not properly risk assessed rollers used on a conveyer belt machine and had failed to guard the roller, which was considered a dangerous part under Regulation 11 of the [Provision and Use of Work Equipment Regulations 1998](#) (PUWER). A maintenance technician was subsequently drawn into the machine and his arm was trapped, leading to injuries. The HSE stated that the risk was foreseeable and, as the company had been prosecuted for a similar incident in the past, it was aware of the potential for injury. The company pleaded guilty to breaching Regulation 11 of PUWER. The case highlights the importance of risk assessing dangerous parts of machinery under PUWER, as the duty is that every employer shall ensure, “so far as is practicable to do so”, that effective measures are taken to prevent access to them and that moving parts are stopped before a person does get access, where this is required.



HSE Launches Waste Management Inspection Initiative. Since 2016, the [HSE has identified](#) an average of eight fatalities per year in the waste industry, with over three-quarters of all fatal injuries relating to transport, machinery and/or being struck by objects. This is around 17 times higher than the fatality rate across other industries when considering the number of fatal injuries per 100,000 workers. In addition to this, there has been an average of 4,000 non-fatal injuries each year, over the previous seven years, in this industry alone. As a result, the HSE regards waste and recycling as a “high-risk sector”, leading it to announce a new inspection initiative running from October 2022 to March 2023 across the UK waste industry, looking at waste management processes and control measures. The HSE hopes that these unannounced inspections will reinforce the messages about selecting the right machine for the job, optimising the process to reduce the need for interventions, and about safe lock off and isolation processes. Businesses therefore need to ensure that they have appropriate policies and control measures in place to assess risks and, where possible, mitigate them, alongside ensuring that workers are sufficiently trained in such risks and control measures. Any poor standards revealed by an inspection could result in enforcement action and a criminal prosecution.

HSE Publishes Work-related Suicide Report. The HSE’s Workplace Health Expert Committee has published the [report](#), which considers the occupational factors that may contribute to the risk of suicide. The report’s findings are that suicide risk varies strongly between occupational groups in the UK, with the highest risk found among workers in low-skilled – and some skilled – positions; that in the UK, there are no systematic methods of taking an overview of employee suicides; and that current means of identifying high-risk organisations and workplaces are weak. It concludes that it would be beneficial to establish a way of recording relevant data and that, where work factors appear important in a suicide, coroners may have a role to play through their Prevention of Future Death reports. Business should be aware that suicides of working age employees may result in a Coroner’s Inquest, and the assessment and mitigation of suicide risks may therefore be put under scrutiny.

Large “Budget” Retailer Convicted and Fined for Asbestos Management Failures. The company was prosecuted by Ipswich Borough Council’s environmental health team, which stated that, following the company taking over a store in 2011, asbestos consultants had identified multiple types of asbestos in several locations and, although the company had the consultants check the asbestos annually, they did not formulate a management plan for staff and visitors as required under the [Control of Asbestos Regulations 2012](#). The company was convicted at Ipswich Crown Court, [fined £565,000 and ordered to pay £75,000 in costs](#). This case will be of interest to businesses with premises built prior to asbestos being banned in late 1999, as the company was given a large fine despite having hired asbestos consultants to check the asbestos annually. It highlights the importance of having in place a proper plan to manage asbestos left in situ, and that hiring consultants and having survey reports is not enough to ensure compliance.

Group Companies Fined for Exposing Workers to Excessive Radiation. The HSE have reported that the company (which provides diagnostic imaging services), and its radiopharmaceutical subsidiary company, failed to provide adequate training, instructions, and supervision to its employees with regards to radiation. In addition, personal protective equipment used by employees was unsuitable for work with radioactive materials, and the radiation warning system was not operated or suitably maintained. The companies pleaded guilty to multiple breaches of the [Ionising Radiations Regulations 2017](#) and were [fined a total of £420,000](#). While this is a rare case, it will be of interest to employers in the nuclear medicine sector, and serves as a reminder of the importance of properly assessing risks to employees posed by radioactive materials and then taking steps to reduce radiation doses to as low as reasonably practicable.



European Commission (EC) Proposes Package of Measures to Tackle Asbestos. The EC has adopted a number of [measures](#), which it says will “better protect people and the environment from asbestos and ensure an asbestos-free future”. It has [proposed a directive](#) of the European Parliament (EP) and of the European Council, amending Directive 2009/148/EC (Asbestos at Work Directive) which would significantly lower the legal occupational exposure limit to asbestos. The EC has opened a feedback period on the directive through its [“Have Your Say” platform](#), with a deadline for feedback of 1 December 2022. The EP and the European Council will work to agree on and formally adopt the proposed directive, after which it will be published and enter into force. EU member states will have two years to transpose the directive into national law once it comes into force.

Food Standards Agency (FSA) Launches Consultation on Proposed Food Law Code of Practice (England) (Code) in Relation to a New Food Standards Delivery Model. The FSA is currently running a 12-week [consultation](#) on proposed changes to the Code to support the introduction of a new Food Standards Delivery Model. These include the introduction of a new food standards risk rating scheme that local authorities will use to evaluate the risk posed by a food business, along with a new decision matrix to determine the frequency at which food standards official controls should be delivered in line with the outcome of the risk assessment. The proposed changes are intended to address shortcomings in the current version of the Code, identified through a local authority survey in 2018. The survey found that food safety officers felt that the Code failed to support local authorities in targeting resources at the areas of greatest risk within the food chain. The consultation is expected to close on 9 January 2023, and we will continue to monitor for updates.

FSA Publishes Response to Proposed Amendment to Edible Insects Legislation. The FSA’s consultation on transitional arrangements for edible insects in Great Britain closed on 10 August 2022 and the [findings](#) have now been published. The proposals include a clear definition of when the transitional measures end, and that, for edible insects to remain on the market after that date, they will need to be subject to a novel food application made to authorities in the UK. The proposals were not intended to change the wider policy position on edible insects. The FSA received over 250 responses from a mixture of members of the public, local authorities, businesses and other organisations. Interestingly, the responses, overall, were generally negative on the principle of edible insects, and many responders misconstrued the consultation as a proposed policy change to buying insect products. Despite the mixed responses, the FSA intends to propose draft legislation to allow edible insects to remain on the market in the UK, but after 31 December 2023, only edible insect species that are subject to an application for novel food authorisation submitted to the appropriate authorities will be permitted to remain on the market.

FSA Publishes Food Safety Charter. The FSA has worked with Deliveroo, Uber Eats and Just Eat to develop the [charter](#), which commits those companies to ensuring that businesses selling food through their platforms meet the minimum standard under the [Food Hygiene Rating Scheme](#) and are registered with their local authority. They must also utilise communication channels with businesses and customers to support those with food hypersensitivities, and share FSA hygiene and safety information. Businesses who utilise these platforms should make themselves aware of these new requirements as it could affect their ability to use the platforms in the near future.



Local Authorities Can Prosecute Consumer Rights Act Offences Committed Outside Their Local Area. The Court of Appeal [determined](#) that paragraph 46(1) of Part 6 of Schedule 5 to the [Consumer Rights Act 2015](#) provides a “free-standing power”; such that local authorities can prosecute consumer offences committed outside their own local areas in England and Wales, irrespective of whether the “local expediency test” (section 222 of the [Local Government Act 1972](#)) is fulfilled. The defendants in the trials to which the appeal related had argued that the “local expediency test” was not fulfilled. The case effectively broadens the powers of local authorities, giving them universal jurisdiction within England and Wales to prosecute consumer offences, and could lead to government selecting which local authority to pursue particular prosecutions. It could even lead to certain local authorities forming specialist consumer offences teams, whether by design or by happenstance.

New Oil and Gas Fields Could Lead to UK Failing To Meet Its Carbon Budget for 2023-2037. The Global Energy Monitor (GEM) has recently published its [report](#) looking at the link between new oil and gas development in the North Sea and the UK’s carbon budget. The report identifies that new oil and gas development in the North Sea could produce up to 984 megatonnes of CO₂ (or equivalent), which would exceed the UK’s carbon budget for 2023-2037. GEM reported that giants in the oil industry (such as Shell, BP and Total) have plans to start up new fields in the North Sea, along with several independent oil and gas companies. The report is also critical of the government’s Climate Compatibility Checkpoint system, which is designed to align oil and gas development with net-zero goals, but GEM states that it does not consider the climate risk of further North Sea oil and gas development. Given that there have been significant recent changes in government, it is not yet clear whether growing oil and gas fields will be a priority. The autumn budget and spending review is expected on 10 November, and we will monitor the announcement closely for further developments.

Advertising Standards Agency (ASA) Bans Bank’s Adverts for Misleading Green Claims. The ASA has taken the decision to [ban](#) two advertisements being run by a bank relating to environmental claims. In the advertisements, the bank claimed that it was investing \$1 trillion globally to help its clients transitioning to net-zero and that they were helping to plant 2 million trees. The ASA received 45 complaints claiming the advertisements were misleading, because they allegedly omitted significant information about the bank’s financing of greenhouse gas-emitting industries. In defending the advertisements, the bank said their climate strategy was consistent with the aims of various climate agreements and climate targets, including its own 2030 financed emissions reduction targets. Upholding the complaint, the ASA determined that the environmental claims were unqualified and were misleading for omitting information on the basis that financing natural gas and oil production during the transition to net-zero (while understandable) was likely to affect consumers’ understanding of the adverts’ overall message and thus was material to the claim. This is an important reminder for businesses, especially those in the finance sector, to be mindful when using environmental claims so that they are not misleading.

Water Company Fined Over £1.2 Million for Pollution Incidents. The water company admitted causing pollution incidents in two separate prosecutions brought by the Environment Agency and was [fined £871,000 and £350,000](#). According to the Environment Agency’s press release, the water company had a number of process failures, including faulty screening, reporting delays, and poor planning and maintenance, which, in combination, created pollution and blockages. In addition, it stated that the company failed to prevent damage to a watercourse when a pumped sewer burst leading to water pollution over a 4km area, which posed a risk to wildlife. This case is one of a number of high fines for water companies in recent years as the Environment Agency has started to view these cases as an enforcement priority.



UK Government Proposes Thousand-fold Increase in Fines for Water Companies. On 3 October 2022, the government (at the time headed by Liz Truss) shared [proposals](#) to raise the maximum cap on civil penalties for pollution incidents to unprecedented levels – from £250,000 up to £250 million per violation. The rationale behind raising fine levels is to incentivise the UK’s water companies to invest in modernising their infrastructure and limit the chances of pollution incidents occurring in the first place. The current level of fine for such discharges is thought to not be enough for industry to decide to take the meaningful (and costly) action to replace aged infrastructure. The civil sanction regime works by way of [variable monetary penalties](#) imposed directly by the Environment Agency, which are currently capped at £250,000. The civil sanctions are only one of the Environment Agency’s enforcement measures, but they are swifter and less expensive than bringing criminal proceedings (where, in contrast, fines are unlimited). On the one hand, the proposed changes suggest that the “polluter pays” principle is now being taken more seriously by government. On the other, it is unclear whether such penalties would ultimately be enforced by the regulator. This is partly on account of resourcing issues, which could hinder how incidents are documented by the regulator, but also because the system partly relies on companies self-reporting incidents. If retained by the Sunak government, the proposals will be subject to consultation. For more on this item, please see our recent frESH [blog post](#).

Task Force on Climate-related Financial Disclosures (TCFD) Publishes Its Fifth Status Report. The TCFD has now published its fifth [status report](#), which found that 60% of the companies reviewed disclosed their climate-related risks or opportunities in FY 2021, compared to 10% in the year prior. The report also identified that of the 100 largest companies reviewed, 92 either supported or reported in line with the TCFD recommendations, which is a 9% increase on the previous year. While these highlights show an increased engagement with the TCFD recommendations, further progress is still needed. The Financial Stability Board has requested another status report from the TCFD in October 2023, and it will be particularly interesting to see how companies report in these unprecedented times.

Financial Reporting Council (FRC) Publishes Report Aimed at Supporting Companies With Their Non-financial Disclosures. The FRC has published a [report](#) designed to help companies preparing disclosures on net-zero and other greenhouse gas emission reduction commitments. The report has made several recommendations for companies to consider, such as clearly outlining commitments, setting out strategies to achieving net-zero (including how it may impact their business models) and starting to consider transition planning. The report provides helpful insight into the practical considerations when planning disclosures.

Climate Change Committee (CCC) Publishes Its Report on Voluntary Carbon Markets (VCMs) and Offsetting. The CCC has published a [report](#) on VCMs and carbon offsetting, which outlines several recommendations to government for stronger guidance, regulation and standards to ensure carbon offsetting, along with improved integrity and transparency of carbon credits. With the potential for greater scrutiny, businesses need to ensure that, where they are relying on VCMs and carbon offsetting, they support high-integrity, nature-based and biological solutions and engineered removals, while focusing on achieving direct business emissions reduction and lower overall global emissions, and positive wider impacts. Given the recent changes in government, the level of priority the government will put behind the report’s findings waits to be seen. We will continue to monitor for updates in due course.



Delays Expected to Scottish Deposit Return Scheme (DRS) as Group Launches Judicial Review. With less than a year to go before implementation of the Scottish DRS (due in July 2023), the scheme's administrator (Circularity Scotland Ltd.) has received a pre-action letter for judicial review from an independent trader, with the apparent support of the Scottish Grocers' Federation. The challenge concerns handling-fees under the Scottish DRS not covering the costs borne by small retailers of setting up reverse vending machines and the general operation of return points. The claimant also raises that the costs projections (on which the DRS was based) predate the current energy and inflation crises. The Scottish DRS is the most progressed in the UK, with legislation adopted earlier this year and a scheme administrator and regulator appointed. However, there remain question marks on the realities of running the scheme. In spite of the judicial review, the Scottish government intends to commit to its July 2023 rollout plan for DRS, however, it is reportedly considering either a phased approach or exempting smaller businesses from the DRS. Meanwhile, the Westminster government's response to its consultation on a DRS scheme for England and Wales is still awaited.

New Prime Minister Reinstates Fracking Ban. During Liz Truss' brief spell as prime minister, the government lifted the moratorium placed on the fracking in 2019 (effectively banning the practice) meaning that shale gas drilling was once again legal. However, new prime minister Rishi Sunak has [reinstated the moratorium](#) saying he "stands by" the Conservative Party manifesto pledge to continue the ban. The lifting of the ban lasted for around a month. The reinstatement of the fracking ban has been welcomed by many environmental groups.

Waste Holder Fined for Failing to Keep and Serve Waste Transfer Notes. All businesses generate waste of some form (such as paper and food waste) and all businesses therefore have a duty of care to ensure that waste is legally disposed of and that this can be evidenced by Waste Transfer Notes (in the case of non-hazardous waste) and/or Waste Consignment Notes (in the case of hazardous waste). Failing to hold such notes for two years and three years, respectively, is a criminal offence under the [Environmental Protection Act 1990](#), however, prosecutions are rare. In a small but rare example of a prosecution for this sort of offence, the Environment Agency has [imposed financial penalties of over £5,000](#) on a Barnsley landowner for failing to comply with a notice to keep and serve Waste Transfer Notes. The case highlights that, although rare, enforcement action can happen and care should be taken to ensure compliance.

UK Government Drops Appeal Against High Court Loss on Net-Zero Strategy. We [reported](#) in July that a group of NGOs had persuaded the High Court that the current Net-Zero Strategy (NZS) was unlawful and breached the government's obligation under the Climate Change Act 2008 (CCA) to produce detailed climate policies showing how carbon budgets would be met. The [full judgment](#) highlighted that the secretary of state had made decisions on whether proposals and strategies allowed the CCA's carbon budgets to be met, without being briefed on each NZS policy's contribution to reducing greenhouse gas emissions. A Friends of the Earth [press release](#) published on 13 October 2022 revealed that government had written to parties and to the court that it would not pursue an appeal. The claimants have highlighted that this presents an opportunity for ministers to focus on the action needed to revise the NZS. An updated NZS, with information on how its policies will achieve the targets set in the CCA, is due to be published in March 2023.



Natural Resources Wales (NRW) Consults on Increasing Charges for Environmental Licences and Permits. NRW is [consulting](#) on its proposals to increase charges and how they fund some of their regulatory services, in the following areas – permits under the Environmental Permitting Regulations (including waste management, industrial processed, etc.), water abstraction and impoundment licences, species licences and reservoir licences. NRW proposes to increase the amount of money they collect from charging schemes to ensure they reflect full cost recovery, to deliver their regulatory approach and the outcomes needed for the Welsh environment and green recovery. Provided the group obtains approval from the Welsh government, NRW intends to implement its final proposals (which will consider feedback received to this consultation) from April 2023. The consultation will close on 7 January 2023.

HM Revenue & Customs (HMRC) Updates Two Pieces of Guidance on Plastic Packaging Tax (PPT). PPT was introduced in April this year, but is generally not well understood by industry and has attracted fewer registrations from businesses who consider themselves liable than were anticipated by HMRC. In a bid to bring greater clarity, HMRC recently updated its [guidance](#) on PPT to help businesses work out if their plastic packaging components are exempt or excluded from the tax, and whether the packaging counts towards the 10-tonne threshold for registration. The section titled “Transport packaging on imported goods” has been updated to include more information about what packaging is exempt from the tax. A new section, “Transport packaging on exported goods”, has been added to address deferring payment of the tax, when liability for the tax is cancelled, and claiming a credit. The following week, HMRC published separate [guidance](#) on secondary liability, assessment notices and joint and several liability notices for PPT. This is to address that businesses can be liable for unpaid PPT due from another person in the supply chain of plastic packaging components, and that a business may be jointly and severally liable for PPT when carrying out activities as part of a related business.

HSE Publishes Members of the UK Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Independent Scientific Expert Pool (RISEP). The HSE (the regulator in charge of REACH matters in the UK since Brexit) has confirmed the makeup of its group for independent scientific advice on chemicals legislation. RISEP has been active since December 2021, but details of its members were only recently made public on the regulator’s [website](#). This was a highly-anticipated publication delayed by several months, with the HSE reportedly not obtaining profile information from the group’s 35 members. Some commentators have criticised the HSE’s transparency in allowing RISEP to become operational before publishing the list of its members, which they are obliged, under Article 88 UK REACH, to make public. The group has, for instance, already been involved in applications for substances authorisation. The list of members contains the qualifications, biographies, and declared interests (including consultancies and other fee-paid work) of each member.



ASA Publishes Research on Consumer Understanding of Environmental Claims. On 20 October 2022, the ASA published the highly anticipated [research report](#) into consumers' understanding of environmental terms, increasingly used in advertising by brands. The report focuses on how the terms "carbon neutral"; "net-zero" and "electric" and "hybrid" vehicles are typically understood, and makes some key findings relevant to all businesses engaging in environmental claims. The research shows there is "a broad spectrum of consumer engagement on environmental issues, influencing their understanding of, and reaction to, environmental claims". There is little consensus on the meaning of the most commonly used claims ("carbon neutral" and "net-zero"), and a possible need for standardised definitions to be policed by an official body. Crucially, participants in the research generally understood carbon neutral as meaning "an absolute reduction in carbon emissions had taken place or would take place", and the reality of offsetting projects could leave consumers feeling misled. Certain sectors were more likely to provoke greater disappointment in consumers when the true role of offsetting was revealed – these sectors were air travel, energy and automotive advertising. The report is not a guidance document, but brands and advisers may find it useful when deciding whether to include an environmental claim in an advert (and whether they have sufficient backing to stand up before a regulator in the likely event of complaints).

EU

Packaging and Packaging Waste Directive (PPWD) Revisions Leaked from the Commission. Even though the official adoption of replacement legislation for the PPWD is not due to be issued until 30 November 2022, a draft of the document was leaked in late October. One of the key changes is that the PPWD is envisaged to be replaced with a regulation. As a consequence, the new provisions will apply directly to the economic operators in all the EU member states without the adoption of national legislation. Some key features of the leaked draft are summarised here. Starting from 1 January 2030, plastic packaging will have to contain specified percentages of recycled content from post-consumer plastic waste (varying for different types, e.g. 50% for single use drink bottles, and increasing from 2040). Methodology for the calculation and verification of this percentage will be established in the Commission's secondary legislation. From 1 January 2030, packaging will also have to comply with "design for recycling" criteria and, and from 1 January 2035, will have to be "recycled at scale." These criteria will be established in delegated acts (although if a delegated act on "design for recycling" criteria is not adopted by 1st January 2027, packaging with the features specified in a "negative list" (not included as part of the leaked regulation document we have seen) will automatically be considered as not recyclable from 1 January 2030. Filter coffee pods disposed together with the used coffee products, sticky labels attached to fruit and vegetables, and very lightweight plastic carrier bags, will have to be compostable by 24 months after the entry into force of the regulation. Each unit of packaging will have to be scaled down to its minimum size with regards to three characteristics – its (i) weight, (ii) volume and (iii) layers. Certain sectors will have further targets – for example, sales packaging containing cosmetics, electronics and toys has a maximum empty space ratio of 15%. Packaging with "volume enhancing properties", such as double walls or false bottoms will be ruled out from the EU market. The legislation envisages reuse targets for transport packaging and grouped packaging used in different sectors. For example, entities placing large household appliances on the market will have to ensure that that 90% of these goods are made available in reusable transport packaging. The draft regulation also includes provisions regarding extended producer responsibility (EPR) schemes and producer registration. We intend to provide further analysis and commentary when the official document is published.



European Commission Identifies Safe and Sustainable by Design Research Needs in Research and Innovation Plan.

The European Commission published a [Strategic Research and Innovation Plan](#) (SRIP), as announced in the [Chemicals Strategy for Sustainability \(CSS\)](#). In the strategy, the Commission announced that it would establish and update a research and innovation agenda for chemicals that would also promote the regulatory uptake of research findings. The plan highlights current research and innovation (R&I) areas crucial for accelerating the transition to chemicals and materials that are safe and sustainable. On Safe and Sustainable by Design (SSbD), the Commission emphasises that, in order to favour the advantages of applying the SSbD framework proposed by the Commission, good case studies of substitution of the most harmful substances are needed. The aim of the SRIP is to guide R&I funders in their decisions on investments across EU, national and private funding programmes. It aims to serve as an opportunity for a more transparent communication among all relevant actors on joint R&I priorities proposed by the wider community – from academia to SMEs, large-scale industry, regulators and policymakers.

European Commission Adopts Its Work Programme for 2023.

The Commission published its 2023 work programme, entitled “A Union standing firm and united.” The document lists 43 new policy and legislative initiatives; eight initiatives to simplify existing legislation; one intended withdrawal and one envisaged repeal. In the second quarter of 2023, the Commission will table a revision of the [waste framework directive](#). Its current measures proved to be insufficient to decouple waste generation from economic growth. The revision will concentrate, in particular, on prevention of food waste and on enhanced recycling of textiles. The Commission will also propose measures improving application of EPR requirements for products sold online to customers in the EU. In last quarter of 2023, the Commission will present revised text of [textile labelling regulations](#). The main aim of the revision is to incorporate parameters regarding sustainability and circularity into the textile products labelling (both physical and digital). In line with its cornerstone document, [EU strategy for sustainable and circular textiles](#), tabled on 30 March 2021, by 2030, textiles placed on the EU market should be durable and recyclable and their landfilling and incineration should be minimised. Relevant labelling will play a significant role in achieving these objectives. Similarly, in Q4 2023, the Commission expects to adopt a revised version of [REACH](#). Following the adoption of the work programme, the Commission will initiate discussion with the European Parliament and the Council to establish a list of joint legislative priorities.

European Chemicals Agency Report on Chemical Export Notifications Shows an Increase in Exports.

The European Agency for Chemicals (ECHA) published its latest [biennial report](#) under the Prior Informed Consent Regulation 649/2012 (PIC Regulation). Under the provisions of the PIC Regulation, the EU has to provide export notifications to the authorities of non-EU importing countries, before the export of certain hazardous chemicals from the EU takes place. According to the report, the EU sent almost 20,000 notifications to 156 non-EU importing countries during 2020 to 2021. The number of notifications is 23% higher than in 2018 to 2019. During the reporting period, the EU also submitted 19 notifications of final regulatory action (FRA) to the Rotterdam Convention (compared with nine in 2018 to 2019, one in 2016 to 2017 and five in 2014 to 2015). Notifications of final regulatory action are the means by which parties inform the Rotterdam Convention Secretariat of their actions to ban or severely restrict a chemical for human health and environmental reasons. Of the 19 notifications, 14 were being banned as pesticides and five severely restricted as industrial chemicals in the EU.



Commission Consults on Upcoming Rules for Materials in Contact with Food. The European Commission opened a [public consultation](#) on the [revision](#) of EU rules on food contact materials (FCM), amending or replacing FCM Regulation 1945/2004. The revision places greater emphasis on the final FCM article, prioritisation of substances (including the most hazardous), supporting safe and more sustainable FCMs and improving supply chain information, compliance and enforcement. The deadline to submit feedback to the survey is 11 January 2023. The proposal for a new regulation was expected for Q2 2023, but it has not been included in the annex of the work programme of the Commission for next year (see above).

Commission Presents Legislative Package to Address Air and Water Pollution. The European Commission presented the [Zero Pollution Package](#), which includes different proposals to strengthen rules on ambient air, surface and groundwater pollutants, and the treatment of urban wastewater. All these initiatives were already foreseen in the Zero Pollution Action Plan, presented last year (please see [frESH Law Horizons May 2021](#)). The proposed [revision](#) of the Ambient Air Quality Directives (2004/17 and 2008/50) sets intermediate 2030 EU air quality standards and includes a zero pollution target to be achieved by 2050. The annual limits for the different pollutants (e.g. PM2.5, PM10, nitrogen dioxide, sulphur dioxide) are proposed to be cut. It also establishes a right for people to be compensated where damage to their health occurs due to violation of EU air quality rules. Nongovernmental organisations (under certain requirements) are allowed to bring collective actions for compensation. The matter of compensation for breach of EU air quality rules has recently been contentious, in particular, case [C-61/21](#), pending at the European Court of Justice (please see [Sustainability Outlook May 2022](#)). The proposed [revision](#) of the Urban Wastewater Treatment Directive 91/271 aims to make the wastewater sector energy-neutral by 2040, by reducing energy use, encouraging water reuse and using sludge to produce biogas. It includes an EPR scheme for medicinal and cosmetic product producers to contribute to the costs of water treatment where they place on the market products that, at the end of their life, lead to the pollution of urban wastewater by micropollutants. The Commission will also [revise](#) and update the list of groundwater and surface water pollutants, by adding new substances (e.g. PFAS, glyphosate and Bisphenol A) and modifying the standards for pollutants already covered by these rules, including heavy metals and industrial chemicals. These proposals will follow the ordinary legislative procedure and will be considered by the European Parliament and the Council.

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