

frESH Law Horizons: May 2021- UK and EU Environment, Safety and Health Law, Procedure and Policy

Article By:

Environmental, Safety & Health Squire Patton Boggs Practice Group

Fire Safety Act 2021 receives Royal Assent.

The Fire Safety Act 2021 (FSA 2021) received Royal Assent on 29 April 2021 and follows a series of improvements to fire and building safety after the fire at Grenfell Tower in 2017. The FSA 2021 amends the Regulatory Reform (Fire Safety) Order 2005 (RRO) and applies to all non-domestic premises, including communal areas of residential buildings and multiple homes. It seeks to clarify certain parts of the RRO and extend its scope within England and Wales. For example, “external walls” now includes doors, windows and anything attached to the exterior of the building, such as balconies (meaning that these will need to be risk assessed). Although the scope of the RRO has now been extended, it does not include the proposed amendment that would have prevented passing fire risk remediation costs on to leaseholders and tenants.

Queen’s Speech 2021: business crime and investigations implications – Building Safety Bill.

In addition to the FSA 2021, the Queen’s Speech on 11 May 2021 introduced various bills the government intends to introduce, one of which is a new Building Safety Bill. If passed, this will create a new Building Safety Regulator to ensure that there is someone responsible for keeping residents safe in high-rise buildings, making sure residents and leaseholders have access to safety information and the introduction of a new complaints-handling requirement. The draft bill is due to be published on 20 July 2021.

Queen’s Speech 2021: Calorie labelling to be mandatory for large hospitality businesses from 2022.

Following the announcement in the Queen’s Speech, draft legislation has been published requiring hospitality businesses that employ 250 or more employees in England to list certain calorie information on non-prepacked foods and soft drinks. Among other things, businesses will need to list the energy content in “kcal” and the size of the portion to which the energy content relates, next to the price. In certain circumstances, a statement should also be included to show that adults need around 2,000 calories a day. This is the latest step in the government’s obesity strategy and, in addition to Natasha’s Law, which will apply from 1 October 2021 for foods that are “prepacked for direct sale”, perhaps shows a continuing trend towards a greater focus on food information for the

out-of-home sector.

Metro operator fined £1.5 million after a worker was electrocuted on high-voltage overhead cables.

An employee of a metro operator was killed when he came into contact with a wire that he believed to be isolated from the power supply, but due to the incorrect installation of equipment, it was actually live. Press reports confirm that the Office of Rail and Road (ORR) found in its investigation, among other things, that failures had continued for a long period of time and that there were serious inadequacies in policy documents covering “live line working”, as they failed to include a requirement that workers test all electrical wires before carrying out work. The fine underlines the importance of addressing known issues early and ensuring policy documents are up to date.

Government advisory group recommends default flexible working policies post-pandemic.

A recommendation has been made by a government advisory group so that flexible working is the default position for all workers following the pandemic. The advisory group, made up of business associations, charities and trade unions, has also been reviewing policies that would support businesses and employees including “hybrid” and flexible working. The Prime Minister and Rishi Sunak raised concerns that such models would put pressure on the urban economy, which relies heavily on the flow of commuters. There may, of course, be different risks associated with mobile working, which may be part of some flexible working arrangements. There is a historic guide available from IOSH on mobile working, covering risk assessments and work equipment. The Health and Safety Executive (HSE) also has information available on protecting home workers.

Waste management company fined more than £1 million after a reversing lorry kills a worker.

A waste management company was ordered to pay £1,080,476 in fines and costs after one of its waste collection workers reversed into another worker, resulting in fatal crush injuries. The worker was assisting the driver during a reversing manoeuvre when he tripped over, and was hit by the vehicle. The HSE found that the company had not carried out a suitable risk assessment on the route and control measures had not been properly supervised. Suitable risk assessments are, of course, essential ahead of carrying out any potentially dangerous activities and for organisations with vehicles, ensuring proper supervision and separation between vehicles and personnel is important.

Call for Improvement in Regulation of Cosmetic Treatments.

The Institute of Licensing (IoL) and the Chartered Institute of Environmental Health (CIEH), among six public health organisations, have sent a letter to the Department of Health and Social Care, calling for better regulation for cosmetic treatments in England. The letter suggests three changes: (i) the creation of a national licensing scheme for practitioners to ensure all those who practice are properly regulated and provide safe treatment; (ii) the development of official guidance for mandatory training and qualification requirements, including knowledge and application of infection controls; and (iii) better recording of adverse events, as well as raising awareness with members of the public to ensure that cases that go wrong can be tracked and improvements made. Although the UK government had already acknowledged better regulation was needed in the area, the CIEH and partner organisations are calling for more.

Supreme Court provides judgment on “deliberate act” in an exclusion clause of an insurance policy.

The case considered by the court related to a claim on a pub's public liability insurance by the widow of a customer who had been choked to death by pub security. Although the policy did include death, it excluded "deliberate acts, wilful neglect or default". The Supreme Court recognised that commercially, insurance policies needed to cover unintended consequences of actions, which often involve deliberate acts. However, the court noted that "if every act done intentionally was 'deliberate', the policy would not cover many of the accidental injuries it was designed to insure." Therefore, the Supreme Court held that a "deliberate" act was one done with the intention of producing the insured outcome: injury. In this particular case, the insurer had only proved that the bouncer had intended to perform a neck hold, not that he intended to cause any actual harm, so the exemption did not protect the insurer from liability. If someone is injured or their property is damaged as a result of an organisation's activities, for example due to a breach of health and safety laws, the injured person may be able to make a compensation claim against the organisation. It will be interesting to monitor how the distinction drawn by the court between intentional and deliberate acts will be applied.

Environmental lawyer found in contempt by the Supreme Court.

The Attorney-General's office has reported that the Supreme Court found the lawyer to be in contempt, following a deliberate leak of a Supreme Court judgment. The Supreme Court had circulated a draft judgment regarding a case concerning the expansion of Heathrow Airport to the parties and their legal representatives under a strict embargo. The embargo came with a warning to all parties (including the lawyer) that a breach could be treated as contempt. The day before the final judgment was announced, Mr. Crosland issued a public statement disclosing the decision, breaching the embargo, and was subsequently held in contempt of court and fined £5,000.

Food distribution company fined £787,500 after a worker accident.

A distributor of fresh and frozen food was fined £787,500 and ordered to pay costs of £33,443.68 after a worker was trapped by a mixing machine. The HSE found an inadequate fault reporting system contributed to the accident and that preventative maintenance and good communication between shop floor and maintenance could have prevented the accident.

CBD novel food applications final list – due June 2021.

The Foods Standards Agency (FSA) has issued a provisional list of CBD products in England and Wales that are able to remain on the market because an application for safety assessment has been submitted to the FSA. Until a decision on their authorisation has been made, the products can remain on sale. The list will be updated on a weekly basis and is subject to change, with a final list expected in June 2021. Any products submitted will undergo a risk assessment to evaluate their suitability for sale on the market. Any companies that have not submitted their CBD products for assessment are expected to remove those products from sale.

Rail company fined £700,000 after a fire broke out at a substation in Kent.

An employee received third-degree and mixed-depth burns when a fire broke out after the company had failed over a significant period to prevent water leaking into the building and had failed to maintain dehumidifiers that had been installed inside. The ORR found that unsafe conditions led to an electrical arc and a fire while employees were working on a circuit breaker. The company had known about the leak for nine months, after staff and contractors raised various concerns. The fine is a reminder that known issues will be taken into account on any prosecution.

Court of Appeal outlines the correct approach to sentencing an offender following retrial.

In *R v AB*, the Court of Appeal set out the correct approach to sentencing an offender at retrial. If, when comparing the two sentences, the provisional total sentence is more severe than the corresponding original total sentence, then it should be reduced accordingly. However, a longer sentence does not necessarily equate to a more severe sentence. Here, the offender received a total sentence of 14 years' imprisonment at the original trial, comprising two consecutive seven-year sentences, one for offences against his sister, and the other his wife. It will be interesting to see how courts apply the principles of this case in the future.

HSE inspections focus on occupational lung disease.

The HSE is currently inspecting fabrication businesses to ensure that they are managing the respiratory risks of welding fumes and metalworking fluids. The HSE will be checking that businesses are complying with the welding fumes guidance and the metalworking fluid guidance. Evidence shows that exposure to welding fumes can cause lung cancer and exposure to metalworking fluids can cause a range of lung diseases, such as occupational asthma and occupational hypersensitivity pneumonitis. HSE inspectors will be checking that employers and workers are aware of the risk and are using the right control to protect workers' health. Although occupational lung disease is the focus, inspectors will also be checking whether businesses are COVID-19 secure.

Ecodesign for Energy-Related Products and Energy Information Regulations 2021

Were laid in draft before Parliament. Following the announcements made in March (reported in frESH Law Horizons March 2021), the draft legislation has been laid, which gives effect to equivalent changes to EU legislation that had been agreed before the end of the Brexit transition period by the UK and other member states. The legislation includes legal obligations on manufacturers to make spare parts for products available to consumers for the first time (often called a right to repair), so that electrical appliances can be fixed more easily. It also updates ecodesign requirements for electric motors, household washing machines, washer-dryers, dishwashers, fridges and electronic displays, and introduces ecodesign requirements for welding equipment and commercial refrigeration.

UK Emissions Trading Scheme (UKETS) auction launches

With carbon prices higher than in the EU. The first auction of 6,052,000 allowances was held on 19 May and carbon prices for future contracts rose as high as £50.23 per tonne. According to the Financial Times, that price was almost £5 per tonne higher than the EU equivalent price on the same day, and well above the threshold of £44.74 that the UK government "had set for intervention to cool prices should it trade above that level for more than a few weeks". Carbon prices more generally have increased significantly in recent months, as governments have stepped up their climate change emission reduction targets. Ahead of the first auction, the government also issued guidance on the supply of allowances in the UKETS, as well as updated its guidance on participating in the UKETS to clarify that it aims to allocate allowances for the 2021 scheme year to operators holding accounts in the UKETS Registry by 28 May 2021. Shortly after the auction, the government also issued guidance for energy intensive industries at significant risk of carbon leakage on compensation for the indirect costs of the UKETS and the Carbon Price Support (CPS) mechanism under the climate change levy. In a further, connected development, the Climate Change Act 2008 (Credit Limit) Order 2021 was laid in draft before Parliament. This order sets a limit on the number of carbon units from overseas that the UK government may use to meet the fourth carbon budget (2023 to 2027).

Department for Business, Energy and Industrial Strategy (BEIS) publishes documents on carbon capture,

Utilization and storage (CCUS). These are the government response to its consultation on a potential approach to cluster sequencing for CCUS, guidance for organisations wanting to take part in Phase-1 of the CCUS cluster sequencing process, and a road map on how government and industry can work together to harness the power of a strong, industrialised UK CCUS supply chain.

High Court judgment on an environmental warranty claim.

In the case of MDW Holdings Ltd v Norvill, the court was asked to consider a buyer's claim under the environmental warranties of a corporate sale and purchase agreement (SPA). The buyer had purchased a waste management company from its three shareholders and made a claim under the SPA warranties regarding trade effluent consent breaches. The court upheld the buyer's claims and did not accept the sellers' counterarguments regarding time limitation clauses, alleged deficiencies in the notice, and in relation to disclosure and the buyer's level of knowledge at the time of the sale. The court also held that the sellers had made misrepresentations in the written responses to due diligence enquiries, in relation to these trade effluent discharge consents, and rejected the sellers' arguments that an entire agreement clause precluded a misrepresentation claim. An order was made against the sellers, jointly and severally, for £382,600 in damages. This is an interesting case, as it is rare to see this sort of dispute reach the courts, and shows that technical arguments will not always triumph over the substance of a claim.

Department for Environment, Food and Rural Affairs (DEFRA) published a consultation on consistency in household and business recycling collections in England.

The consultation is part of a series of waste and recycling-related reforms, including extended producer responsibility and the deposit return scheme, both of which have been the subject of recent consultations. This is the second consultation on the subject of more consistent recycling, and it makes proposals intended to increase recycling levels by introducing a consistent set of recyclable materials for collection in England.

The consultation is open until 4 July 2021. 6 The Environment Bill returned to Parliament on 26 May.

Ahead of this, the government made various announcements about proposed amendments to the bill, including powers to amend the Habitats Regulations and a legally binding 2030 target on species abundance, and connected measures, such as a peat action plan, a trees action plan and a species reintroductions code. Other proposed amendments to the bill include that prohibitions on using a forest risk commodity should be aligned with the consent of indigenous people and should comply with relevant local laws, a plan to reduce sewage discharges from storm overflows, a block on future fracking, sustainability labelling on food, and granting protected species status to hedgehogs. The next stage of the debate will be the second reading in the Lords on 7 June. Meanwhile, DEFRA published a blog post defending the bill in response to an article in The Guardian claiming that the bill does not protect against developers concreting over green space, lacks provisions for improving air quality, and contains inadequate protections for wildlife.

The Climate and Environment Ministers of the G7 make commitments on climate, biodiversity and the environment.

The G7 Climate and Environment Ministers' Meeting took place virtually on 20 to 21 May 2021 and resulted in a communiqué, which includes commitments to conserve or protect at least 30% of the world's land and at least 30% of the world's ocean by 2030, as well as commitments to reaching net-zero carbon emissions by 2050 at the latest, with deep emissions reduction targets in the 2020s. The group also agreed to phase out government funding for fossil fuel projects internationally, with the first step being to end all new finance for coal power by the end of 2021, and to increase support for clean energy alternatives like solar and wind.

Competition and Markets Authority (CMA) consults on draft guidance for businesses about “green” claims.

The proposed guidance sets out six principles that environmental claims should follow. They must be truthful and accurate; must be clear and unambiguous; must not omit or hide important information; must only make fair and meaningful comparisons; must consider the full life cycle of the product; and must be substantiated. The CMA is inviting views on its guidance and is particularly keen to hear from anyone who buys or sells products that claim to be eco-friendly, including whether any further information is needed to help companies comply with the law. The consultation will run until 16 July 2021, with the aim of publishing the final guidance by the end of September 2021.

Dutch court orders Shell to reduce its CO2 emissions by 45% by 2030.

In a landmark decision, the Dutch high court ordered Royal Dutch Shell, by means of its corporate policy, to reduce its CO2 emissions by 45% by 2030 with respect to the level of 2019 for the Shell group and the suppliers and customers of the group. The case was brought by seven environmental action groups on behalf of more than 17,000 Dutch citizens, and is the first time a court has sought to force a major energy firm to change its climate strategy. Earlier this year, Shell set out relatively ambitious climate strategies, but the court held that its climate policy was “not concrete and is full of conditions ... that’s not enough.” In response, Shell has said that “urgent action is needed on climate change, which is why we have accelerated our efforts to become a netzero emissions energy company by 2050,” and that it fully expects to appeal this “disappointing court decision”.

Turkey halts imports of certain plastics amid claims of illegal disposal.

The Turkish government has announced that from 2 July, it will no longer be accepting imports of polyethylene waste, on top of other restrictions about mixed plastic and mechanically sorted plastic announced in January. There have been recent media and NGO investigations into plastic waste in Turkey, which claim that large quantities are being dumped and burned illegally, rather than being recycled. Commentators have highlighted a number of possible knock-on effects of this ban, including a shift to other markets such as Lithuania and Poland, but also stockpiles of waste building up in the UK.

Thames Water fined £4 million for sewage pollution.

Thames Water pleaded guilty in relation to permitting breaches caused by sewage sludge pollution incidents between 2016 and 2019 in the Kingston area. This conviction brings the total fines imposed on Thames Water in relation to water pollution since 2017 to £28.4 million. In response, Thames Water explained that it has “developed a turnaround plan which focuses on significantly improving our performance, with an unprecedented amount of investment directed towards safeguarding the environment. We’re committed to long term, sustainable solutions and we’re already working with partners across our region to enhance and restore the rivers we all share and value.”

Scientists write a letter to UK ministers about chemical data requirements under UK REACH.

The letter is from scientists working in chemical risk assessment and related areas, and it asks the UK government to resist industry proposals to reduce costs by lowering requirements for chemical safety data in UK REACH, and instead to explore securing UK access to the EU REACH chemicals safety database. It acknowledges that a key part of UK REACH is the creation of a new database of chemical risk information, which will be critical for effective chemical regulation. It refers to the lack of access rights to the EU REACH database and that current UK REACH proposals involve populating a UK database from scratch, which will be very expensive to build, and as a result, there is some pressure to reduce costs by potentially lowering some of the data requirements. Access to data and the costs of data production and acquisition remain the biggest outstanding issue in relation to UK REACH.

Young people challenge government on climate policies.

Three young people, backed by NGO Plan B, are bringing a legal challenge for judicial review against the government's climate policies, using human rights grounds. The application relies on the rights to life, to family life and to live free from discrimination (Articles 2, 8 and 14 of the European Convention on Human Rights, as enacted via the Human Rights Act 1998). The claimants argue that the UK is making a "dishonest" claim to climate leadership and adhering to the Paris Agreement commitments. The Dutch and German courts have both recently heard cases on similar grounds, and ruled (at least in part) in favour of the claimants, acknowledging the human rights arguments. This will, therefore, be a legal case worth watching.

Environment Agency (EA) sets out its road map for reaching net-zero by 2030.

The EA's road map for cutting carbon emissions and reaching net-zero by 2030 sets out the EA's commitment to cut its carbon emissions by at least 45% and offset the rest. It breaks down the sources of the EA's emissions and the tangible actions we will take to reduce them. The EA announcement states that this will benefit people and nature, tackle the EA's own contribution to climate change and support the government's ambition of a net-zero nation by 2050.

EA crushes a truck linked to a Kent waste crime.

Using its relatively new additional powers to combat illegal waste activity, the EA seized and crushed a tipper truck linked to illegal waste activity across Kent. The truck was seen at a number of waste sites across Kent and was linked to illegal dumping of waste at commercial properties. The EA commented that it has no hesitation in using all powers open to it, including seizing and crushing vehicles, which is an important weapon in its armoury for disrupting this type of criminal activity.

The Court of Justice (ECJ) clarifies the meaning of "installation" and "technical unit" under the EU Emissions Trading Scheme (EU ETS) Directive.

In this case, the operator had a thermal unit with a secondary cogeneration unit on the same site. It then transferred the cogeneration unit to an energy company (which supplied energy back to the operator). The operator sought to update its GHG permit to remove the cogeneration unit that had been transferred. The court held that the directive does not preclude an operator from doing so where the thermal power facility and the cogeneration unit do not constitute a single installation, and this included an assessment of the concept of the terms "installation" and "technical unit" used in the directive.

European Commission consults on the EU strategy for sustainable textiles.

Following a road map exercise in January 2021, the Commission has now launched a consultation on this strategy, which will help the EU shift to a climate-neutral, circular economy where products are designed to be more durable, reusable, repairable, recyclable and energy-efficient. This initiative is likely to be of interest to a broad spectrum of stakeholders, within or outside of the EU. In particular, the Commission welcomes input from actors along the textile value chain (fibre, yarn, fabric or clothing/ textiles manufacturers, retailers, post-consumer textile collectors, sorters and recyclers, including SMEs), as well as public authorities, citizens, consumers and social partners, investors and research, innovation and training centres.

European Commission starts revision of the REACH Regulation.

The Commission's inception impact assessment (IIA) provides a legislative road map for the targeted review of REACH Regulation (1907/2006), the main piece of EU chemicals regulation. The overall objective of the revision is to ensure that REACH reflects the ambitions of the Commission on innovation and a high level of protection of health and the environment, while preserving the internal market, as provided for in the Chemicals Strategy for Sustainability (CSS; please also see frESH Law Horizons January 2021 and February 2021). The IIA presents various preliminary policy options covering registration, supply chain communication, evaluation, authorisation (including potential removal of the authorisation process from REACH), restriction and minimum enforcement requirements. Among other things, an abolition of the authorisation system would go beyond what the Commission had heralded in the CSS. Conversely, the IIA does not explicitly discuss a number of other changes foreseen in the CSS, such as adding endocrine disruptors, persistent, mobile and toxic, and very persistent and very mobile substances to the list of substances of very high concern (SVHC). Stakeholders can submit comments on the IIA until 1 June, which, as usual, will be followed by targeted stakeholder consultations and an open public consultation for 12 weeks. The Commission plans to adopt a legislative proposal in Q4 2022.

European Commission starts revision of classification, labelling and packaging rules for chemicals.

The Commission also implements the CSS with its IIA for the revision of the CLP Regulation 1272/2008, the other major horizontal piece of EU chemicals regulation. Contrary to the revision of REACH, the Commission will consider a range of non-regulatory and regulatory measures regarding the CLP, according to the IIA. These could include new hazard classes (such as endocrine disruptors), specific rules for online sales, the use of an only representative type-system for poison centre notifications, and changes to labelling rules. This IIA is also open for comments from stakeholders until 1 June. Besides the usual forms of consultation, existing CLP-relevant fora would be used, such as CARACAL, its subgroup on endocrine disruptors, and ECHA's enforcement forum, Helpnet network, and expert groups. The Commission plans to adopt a legislative proposal in Q2 2022.

European Commission adopts the Zero Pollution Action Plan.

The communication is accompanied by two Staff Working Documents on a zero pollution monitoring and outlook framework and on digital solutions for zero pollution. It sets targets for 2030 for air, water, soil, biodiversity, noise and waste. These targets include reduction of plastic litter at sea by 50%, reduction of microplastics released into the environment by 30%, reduction of chemical pesticides' use by 50%, and reduction of residual municipal waste by 50%. Besides the targets, the

communication provides a list of legislative and non-legislative actions, some of which have already been announced. It also calls for stricter implementation and enforcement of environmental law, and states that the Commission “will increasingly focus its implementation and enforcement efforts on ensuring that all EU pollution prevention laws are effectively complied with”. It encourages the application of existing inspections and other compliance checks and penalty clauses at the national level and assesses possibilities to improve them, where relevant. The Environment Council is expected to discuss the communication in June.

European Commission issues draft rules on the separate collection of single-use plastic beverage bottles.

The Commission published a draft implementing decision on the calculation, verification and reporting of data on the separate collection of single-use plastic beverage bottles, based on the EU Single-use Plastics Directive 2019/904 (SUPD). The SUPD sets targets for member states to separately collect 77% (by weight) of all single-use plastic beverage bottles placed on the market by 2025, and 90% by 2029. In order to ensure compatibility and accuracy of the data across the member states, the implementing decision lays down more detailed rules, but the draft provides some flexibility for member states. Following a four-week feedback period, the Commission is expected to consult member states’ representatives and submit its draft for a vote by them in the coming months. Therefore, the adoption of the decision will be delayed from July 2020, which the SUPD has foreseen. Member states could pass on parts of the reporting obligations to economic operators.

European Commission elaborates on the “one in, one out” approach in better regulation.

At the end of April, the Commission adopted the long-awaited Better Regulation communication. Its objective is making legislation, including environmental legislation, as efficient as possible. The “one in, one out” approach is presented in the context of “instruments for further simplification and burden reduction”. It is defined as “offsetting new burdens resulting from the Commission’s legislative proposals by equivalently reducing existing burdens in the same policy area”. The Commission explains that it will not apply the approach mechanically. Rather, it will seek to offset the burdens in some legislation with savings in others in the same policy area. The main test would be whether the benefits outweigh the costs (as happens under the current better regulation guidelines) and should not lead to lowering of standards and objectives, nor prevent new initiatives. In exceptional cases, the Commission could decide to exempt a new regulation from the “one in one out” approach altogether. After a pilot phase in the second half of 2021, the Commission will start implementing the approach with the Commission Work Programme 2022. It will report on its implementation in the Annual Burden Survey.

European Commission report quantifies the greenhouse gas (GHG) reduction potential of plastic recycling.

The Commission’s Joint Research Centre (JRC) issued a technical report on “Environmental effects of plastic waste recycling”. It finds that the total annual GHG savings from mechanical recycling (chemical recycling is not addressed) – if 70% of the polymer waste currently not separately collected is separately collected, and sent to recycling – would amount to 17.6 Mt CO₂-eq./y. Taking a system perspective, it looks at the effect of recycling instead of incinerating or landfilling. This would lead to savings per tonne of waste of 1140-3573 kg CO₂-eq. Taking a product perspective, it finds that the savings due to the replacement of virgin plastic with recycled would amount to 147-1493 kg CO₂-eq. per tonne of waste. In line with the role of the JRC, the report does not propose concrete policy options.

European Parliament demands that the EU strengthens its rules on companies' environmental liability.

The Parliament's plenary adopted a non-binding resolution for the revision of the Environmental Liability Directive 2004/35 (ELD). The Parliament hopes that turning the ELD into a regulation would attain a more harmonised implementation across member states and make the rules directly applicable. The report states that weak mechanisms for compliance and effective governance have led to implementation deficiencies and variability between member states. The report calls for the creation of a task force (made up of experts and Commission staff) to help with the implementation in the member states. The Parliament also demands that the Environmental Criminal Directive 2008/99 be updated, that the Commission study the relevance of "ecocide" to EU law and that the mandate of the European Public Prosecutor's Office should be extended to cover environmental offences. During the plenary debate preceding the adoption of the resolution, the Commission announced that it is currently preparing a revision of the ECD and will soon launch an evaluation of the ELD, before considering a possible revision. Related to this issue, the Commission adopted guidelines in March that clarify the scope of the term "environmental damage" in the ELD (please see frESH Law Horizons March 2021). European Parliament adopts a position on access to environmental justice. The Parliament's plenary adopted a legislative resolution on the revision of the EU Aarhus Regulation 1367/2006 on access to information, participation and justice in environmental matters. The Parliament's amendments in general would grant the public greater participation in the making of a wider range of decisions, and broaden the scope of decisions that fall under the regulation. The Commission presented the legislative proposal to amend the Aarhus Regulation in October 2020 (please see frESH Law Horizons October 2020). The Parliament's resolution is the basis for its legislative negotiations with the Council. According to a recently leaked opinion of the Council's legal service, it would not be consistent with EU law to allow NGOs to challenge administrative acts that require implementing measures at the EU or national levels.

European Commission explains REACH authorisation in view of a landmark judgment.

A note drafted in April by the Commission units responsible for chemicals regulation, for its REACH Committee, has been leaked. It argues that its current administrative practice regarding REACH authorisations is in line with the recent ruling of the ECJ (case C-389/19; please see frESH Law Horizons February 2021) on the authorisation of certain uses of lead sulfochromate yellow and lead chromate molybdate sulfate red. The Commission notes that the ECJ acknowledged that the level of proof required of the applicant should not be unreasonable, but requires a thorough assessment of all evidence available, including that gathered by the Commission. The Commission's current approach differs from the one contested in the ECJ case, as it is based on all available scientific evidence and concluded explicitly on the basis of a "sufficient weight of evidence". On the evaluation and discretion enjoyed by the Commission in the analysis of alternatives, the Commission states that it considers a substance to be a substitute even if there are minor losses of performance. This approach would also be in line with the finding of the ECJ that a "zero performance loss" approach is in contrast with the very purpose of REACH, i.e. to promote replacement of substances of very high concern (SVHCs).

ECHA explains the harmonised classification and labelling process.

ECHA issued a guide on "How to submit a CLH dossier" to assist users in complying with their obligations under the CLP Regulation. Depending on the circumstances/ prior status of the substance, CLH proposals can be submitted by a competent authority of a member state or by a manufacturer, importer or downstream user of a substance. After addressing general and procedural

issues, the guidance discusses physical, human health and environment hazards, before explaining the relationship between CLH dossiers and plant protection, as well as biocidal products.

© Copyright 2025 Squire Patton Boggs (US) LLP

National Law Review, Volume XI, Number 211

Source URL: <https://natlawreview.com/article/fresh-law-horizons-may-2021-uk-and-eu-environment-safety-and-health-law-procedure>