



IEEP UK Divergence Newsletter

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Shark Fins: A boost to the UK fight against the trade in shark fins and finning

In late June the [Shark Fins Act](#) passed into UK law banning the international trade in shark fins. It includes the import and export of detached shark fins and the ban on products containing shark fins (such as tinned soup). The 'finning' of sharks has been banned since 2003 by the UK and EU. A ['Stop finning - Stop the trade'](#) citizens' initiative has called for an end to the trade of loose shark fins in the EU as well but this has yet to occur. The UK primary legislation has opened up an area of legal divergence with the EU as the EU has promised to examine legislative measures and to carry out an impact assessment on the environmental, social and economic consequences of a 'fins naturally attached' policy.

The 'CE mark' - a case of dynamic alignment in action

The UK Government announced its [decision in August](#) to extend the existing period of recognition of products with the [conformité européenne](#) (CE) mark for use and sale in Great Britain (there are some specific rules related to Northern Ireland included in this detailed [guidance here](#)). The mark applies to a wide range of products, including electrical goods. There had been plans to stop allowing the CE mark in favour of an alternative 'UKCA' mark instead after UK Exit from the EU. However, there had been concerns that this would lead to extra costs and bureaucracy for businesses which would have to apply for dual registration to trade on the GB and EU markets. This change means that businesses placing products in the GB market can either use the CE mark or the UKCA mark (though businesses placing products on the EU market must only use the CE mark as the UKCA mark is not recognised there).

This decision also means that there is a form of dynamic alignment at work between the UK and EU – essentially, that UK producers selling in the UK market will want to mirror EU standards if there is a chance that their products may end up on the EU market. It is also worth noting here that the UK Government has maintained its membership of [CEN and CENALEC](#), broadly speaking, standardisation bodies for products, materials, services and processes.

From the EU

EU Carbon Border Adjustment Mechanism starts on 1 October 2023

The EU's [Carbon Border Adjustment Mechanism](#) (CBAM), Brussels' flagship policy for tackling carbon leakage and [alongside the Emissions Trading Scheme] help price carbon emitted during production of intensive industrial processes began its first phase on 1 October 2023. Traders are obliged to report on the direct emissions embedded in their imports into the EU initially covering the iron, steel, cement, aluminium, fertilisers, and electricity sectors. This first phase has been designed as a learning period before the full system comes into operation in January 2026 when financial payments will need to be made to buy CBAM certificates to cover the corresponding embedded emissions. To give prior warning to importers and third country producers, the European Commission published its [Implementing Regulation](#) in August, and detailed [guidance](#) for EU importers to implement the new rules.

The introduction of CBAM has led to a consequential and clear case of legal *and* policy divergence between the EU and the UK. The EU has decided it wants to tackle carbon leakage and the potential under-cutting of EU based producers of carbon intensive products (from those countries with less stringent environment and climate laws) and has legislated accordingly. As CBAM comes in, the existing free allowances to heavy emitters under the ETS will be phased out.

In what is arguably a case of the '[Brussels effect](#)' in action, the UK is actively considering how its businesses can avoid falling foul of the EU's CBAM rules and having to make [large financial transfers](#) to the EU when the full system becomes operational. This looks likely to happen while UK carbon prices are significantly lower than those in the EU, as they are at the moment. The UK Government is currently [consulting](#) on its own carbon leakage plans and is considering potential policies like its own CBAM and it is understood that the result of this consultation is imminent. The Government will need to find a way to demonstrate that UK businesses have in place carbon policies (and prices) that are roughly equivalent to the EU.

It is very possible that this policy and legal divergence is a purely *temporal* one – in other words, a case of the UK just needing to catch up with what the EU has already done. We will have to wait and see what the UK Government decides to do.



Urban Wastewater Treatment Directive: 'Zero Pollution Action Plan' rumbles forward

In October 2022, the European Commission [proposed an update](#) to the 1991 (and the 1998 amending directive) on Urban Wastewater Treatment. If approved, and the

UK does not follow, this would open up legal divergence between the EU and UK because the proposal introduces, amongst other things, new requirements such as the monitoring of microplastics and introducing *Extended Producer Responsibility* targeting pharmaceuticals and cosmetic products. In early October the European Parliament agreed its first reading position and so the legislative baton moves to the Council for agreement in that Institution.



Batteries: EU introduces green legislation as UK starts new strategy design.

On the 17 August, the EU approved a new [Batteries Regulation](#) to lower the carbon footprint of batteries, reduce the associated use of harmful substances, shorten raw material supply chains, and set targets for recycling efficiency, material recovery and battery recycled content. It also sets out plans to make it easier for consumers to be able to remove and replace the portable batteries in their electronic products.

Previous EU batteries legislation dates from 2006, when the UK was a member of the EU (the UK's implementing legislation dates from [2008](#), [2012](#) and [2015](#)) so this new 2023 EU legislation opens up a new case of legal and policy divergence. It is also worth noting that the EU's new legislation comes in the form of a *Regulation*, rather than a *Directive*, which requires Member States to implement the legislation in its entirety rather than giving member states discretion on how to achieve the goals of the directive.

In the meantime, the UK recently closed a [call for evidence](#) (28 September) for a new [battery strategy](#), focusing on their design, development, manufacturing, and recycling to help meet UK net zero objectives. In many respects, the call for evidence mirrors many parts of the new EU regulation; for example, it attempts to tackle shortages of critical raw materials. However, it is unclear whether new legislation will emerge out of the call for evidence or whether it will involve the setting of targets such as on minimum levels of recycled content (for cobalt, lead, lithium and nickel) in batteries.

In related news: Lithium compounds...

The Health and Safety Executive (HSE) provided an [Opinion](#) that lithium carbonate, chloride and hydroxide, key compounds used in electric vehicle batteries, should not be given mandatory classification and labelling in line with GB Classification, Labelling and Packaging (CLP) Regulation. In contrast, the European Chemicals Agency (ECHA) has recommended that these compounds be classed as ‘reproductive toxicants’, resulting in the need for labelling and increased information about their properties (for example, it will help to provide more information to workers who are handling those compounds about the importance of using personal protective equipment). However, what this classification does not do is stop the continued use of these substances - they are widely used already in many industrial processes, but it could increase costs for businesses as they have to comply with stricter health and safety rules.

This more liberal approach in the UK will, in effect, give the UK a competitive market advantage and benefit domestic lithium refiners. The HSE opinion and the ECHA recommendation are not necessarily final positions for either the UK or EU as Ministers may decide to change tack. Indeed, a delay in a decision by the European Commission perhaps indicates the strength of lobbying by European industry groups, but for now, a *divergence by design* has emerged whereby the UK have an opportunity for commercial advantage.

In Focus...

Timmermans' departure raises concerns over EU Green Deal.

Frans Timmermans has [resigned](#) as European climate commissioner and Executive Vice-President in a bid to become the next Dutch Prime Minister. Timmermans' role has been broken into two. Overall European Green Deal responsibility will be [taken over](#) by Maroš Šefčovič, an experienced commissioner who successfully navigated fraught EU cross-Channel relations with the UK after Brexit. Whilst the Netherlands have [decided](#) on former foreign minister, Wopke Hoekstra, to replace the departing Timmermans as the Commissioner on Climate policy. Both Commissioners are now in place following tough hearings in the European Parliament.

For more on this, and the future of the EU Green Deal, read our blog by David Baldock [here](#).



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This newsletter is part of IEEP UK's 'Divergence Project' dedicated to tracking and reporting shifts in environmental policy happening in the UK and EU, assessing the degree of alignment or divergence between them, and analysing the potential impacts for the environment and climate as a result.

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