

even in relation to information the Commissioner etc says should be disclosed, but this is likely to be exercised only rarely.

A great deal of animal suffering takes place behind closed doors such that the public never gets to hear about it, unless there is an undercover investigation. The FoI Act should enable the veil of secrecy to be pulled back. Commercial confidentiality will continue to trump transparency in many cases, but much information should nevertheless be disclosable.

One of the principal battlegrounds will be animal experiments, where the Government and researchers have always resisted the disclosure of information (except on their terms). Early indications are that the Home Office will fight meaningful disclosure but there are powerful arguments that their approach is unlawful. Non-governmental organisations are likely to test these arguments over the coming months.

French cosmetics challenge

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France is challenging before the European Court of Justice (ECJ) the animal testing amendments to the Cosmetics Directive⁵ introduced in 2003.⁶ The amendments are very complicated, but in essence they ban

animal testing for cosmetics in the EU by March 2009 at the latest and the sale in the EU of cosmetics tested on animals after that date (or March 2013 in relation to three particular tests), wherever the testing took place.

France argues (amongst other things) that (a) the sale ban is inconsistent with the World Trade Organisation (WTO) agreements; (b) the provisions as a whole are ambiguous and therefore fail the test of legal certainty; and (c) they are disproportionate in their effect (the advantages to animal welfare are outweighed by the disadvantages to business).

On 17 March, Advocate General Geelhoed delivered his opinion on the case to the ECJ. He advised the court to dismiss the challenge, on all grounds. His reasoning is powerful and he makes comments which have an importance for animal welfare beyond this case. His view is that, although this would be a matter for the WTO dispute panels not the ECJ, the sale ban does not fall foul of the WTO agreements. This is particularly important, given that it is often argued – incorrectly – that the agreements prevent bans on the import of cruelly-produced goods.

The ECJ normally adopts the advice of its advocate generals and it would be a surprise if it did not do so in this case.

⁵ Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products, OJ L 262, 27.9.76, p. 169.

⁶ Case C-244/3 French Republic v European Parliament and Council of the European Union, not yet published.