

# "SHARING HERITAGE" EUROPEAN CULTURAL HERITAGE YEAR 2018



14<sup>th</sup> Annual Conference of the  
European Heritage Heads Forum (EHHF)

Stockholm, Mai 2019

## ANNUAL REPORT of the EUROPEAN HERITAGE LEGAL FORUM (EHLF)

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German National Committee on Cultural Heritage (DNK)  
Bavarian State Conservation Office (BLfD)



Deutsches Nationalkomitee  
für Denkmalschutz



Die Beauftragte der Bundesregierung  
für Kultur und Medien

# European Union Europe Day

© Allianz Arena

EUROPEAN CULTURAL  
HERITAGE YEAR 2018  
**SHARING  
HERITAGE**

**May 9<sup>th</sup>, 2019: Allianz Arena Munich** - Architectural masterpiece (2005) by Swiss architects **Herzog & de Meuron**: Football stadium of the FC Bayern Munich in the north of Munich, venue of the 2006 FIFA World Cup and venue of the final match of the UEFA Champions League 2012!



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**May 9<sup>th</sup>, 2019:** The **Catholic branch church of the Holy Cross (ca. 1200)** is the oldest surviving church building in the city area of Munich and the only testimony of the village of Fröttmaning, which is now a de facto desert!



**Venue of the 11<sup>th</sup> Full meeting of the European Heritage Legal Forum (EHLF) on April 27<sup>th</sup>-29<sup>th</sup>, 2019 in the Little Orangery of the Charlottenburg Castle, Berlin:**



© DNK

## Essentials to report:

1. The **EU-Biocidal-Products-Regulation (BPR)** EU No. 528/2012 and the impact on CH
2. The **Construction Products Regulation (CPR)** EU 305/2011 and the impact on re-use of used and “second-hand” building materials
3. Update of the **EHLF Operational Guidelines**
4. Representation of the EHLF Members in the Standing Committee **EHLF**
5. (Re-) **Election** of the **Members and the Chair of the EHLF Secretariat**





# Annual EHHF Report:

## EUROPEAN HERITAGE HEADS FORUM

**ANNUAL REPORT  
YEAR 2018**

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## Essentials to report:

1. The **EU-Biocidal-Products-Regulation (BPR)** EU No. 528/2012 and the impact on CH

Example: **Venetian gondola** on display in the Museum of European Cultures, National Museums in Berlin









© Stephan Biebl



# **Anoxia treatment using oxygen scavengers for disinfestation of large museum objects**

© following photos: SB Stephan Biebl, Ingenieurbüro für Holzschutz





© Stephan Biebl



- The realistic scenario in many parts of Europe: The adoption of the "new " EU Biocide Regulation 2012, until recently, **was not even noted by the parties concerned** (besides f. e. our colleague Stephan Biebl, whose attempts to fight for a non-absorption of nitrogen in the appendix I BPR in 2013 were finally not successful)!
- The EU, ECHA and the national competent authorities consider the widespread pest control of nitrogen in the restoration since the entry into force of the EU Biocide Regulation **to be no longer permissible.**
- However, pest control with nitrogen is considered by many relevant restorers and museums to be **the only method without any risks to the objects** up to date, **regardless of the material.** In addition, in most nitrogen plants, **nitrogen is extracted from the air with the help of membranes, that is, in situ.**

Ref.Anes(2019)2571050-**12/04/2019**

The Director-General

**Brussels,**

SANTE/E4/LC/skd(2019) 2848823

Dear Mr Keller, Ms Lavenir,

**Subject: Your letter of 13 March 2019 concerning the use of nitrogen for the preservation of museum objects or monuments ...**

...

Y ours sincerely,

Anne Bucher





## Anne Bucher, The Director-General:

- The Commission services recognise the importance of the preservation of cultural heritage for present and future generations.
- The Commission is not empowered to repeal the classification of nitrogen as an active substance for the specific purpose of heritage preservation, as the scope of the BPR has been defined by the European Parliament and the Council when they established EU legislation on biocides.
- The BPR covers all actives substances and mixtures used with the intention of destroying, deterring, rendering harmless, preventing the action of, or otherwise exerting a controlling effect on, any harmful organism by any means other than mere physical or mechanical action.
- Annex I of the BPR contains biocidal active substances that are less hazardous. Therefore, when adopting the BPR, the European Parliament and the Council included nitrogen into Annex I in order to allow for the authorisation of products on the market under a simplified procedure provided, in particular, that the active substance be used in limited quantities in ready-for-use canisters.
- Nitrogen can also be generated in-situ for use as a biocidal active substance, which is particularly relevant when bigger volumes are needed. This has so far not been assessed and, consequently, **nitrogen generated in-situ is currently not approved for use in the EU!**

## Anne Bucher, The Director-General:

- When adopting the BPR, the co-Legislators established a transition period allowing interested companies to submit applications for the approval of certain active substances previously not regulated under the BPD – such as in-situ generated nitrogen - before September 1<sup>st</sup>, 2016: **no company submitted an application for the in-situ generation of nitrogen.**
- Member States may request from the Commission **a derogation under Article 55(3) of the BPR** to authorise a biocidal product using a non-approved biocidal active substance **if the Member State considers that the active substance is essential for the protection of cultural heritage and that no appropriate alternatives are available!**
- Using this provision in the Biocides Products Regulation, Member States could thus ask the Commission **for a derogation for a biocidal product consisting of in-situ generated nitrogen** and provide the necessary justification.
- Alternatively, one **could submit an application** with the necessary data in order to **include in-situ generated nitrogen into Annex 1 to the BPR**, and later on request the related product authorisations in the Member States.



## **DRAFT AGENDA**

**83<sup>rd</sup> meeting of representatives of Members States Competent  
Authorities for the implementation of Regulation (EU) No  
528/2012 concerning the making available on the market and use  
of biocidal products**



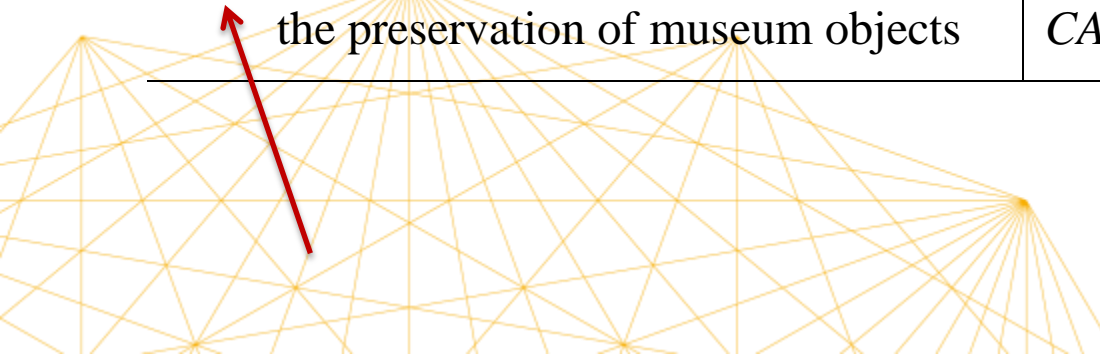
**16-17 May 2019**

**Starting at 10:30 on Thursday 16 May – Ending at 15:00 on Friday 17 May**



Location: Centre Albert Borschette – room 0C

<b>5. Active substances</b>		
5.1. Progression of the review programme on active substances	For information <i>CA-May-Doc.5.1</i>	
5.2. Progression of the renewal process of approval of active substances	For information <i>CA-May19-Doc.5.2</i>	
5.3. Management of in situ generated chlorine dioxide and related substances in the Review Programme	For discussion and agreement <i>CA-May19-Doc.5.3</i>	
5.4. The in-situ generation of nitrogen for the preservation of museum objects	For discussion <i>CA-May19-Doc.5.4</i>	



## "IPM 2019"

### International Conference for Integrated Pest Management

<https://www.raa.se/in-english/events-seminars-and-cultural-experiences/ipm-2019/programme/>

**Stockholm, May 21<sup>st</sup>-23<sup>rd</sup>, 2019**

**May 22nd, 2019, 15:20–16:30 | Session 7**

Chaired by Christian Baars, Pascal Querner & Charlotta Bylund Melin

### **Capability and limitations of anoxic treatments for protecting museum collections**

*Bill Landsberger, Harro Frauendorf, Cornel Adler & Rudy Plarre*

### **European restriction of using nitrogen in anoxic pest treatments – open discussion**

with an introduction by Christian Baars & Pascal Querner



## Essentials to report:

### 2. The Construction Products Regulation (CPR) EU 305/2011 and the impact on re-use of used and “second-hand” building materials

- The Construction Products Regulation lays down "(...) conditions for the placing or making available on the market of construction products by establishing harmonised rules on how to express the performance of construction products in relation to their essential characteristics and on the use of CE marking on those products." (see Art. 1 CPR).
- Harmonizing rules, indicating the performance of construction products in relation to their essential features, sets out the smooth functioning of the internal market by harmonised technical specifications (see recital 58 CPR).
- The basic requirements reflect the building requirements in the Member States at an abstracted level. They leave unaffected **the competence of the Member States to determine the level of requirements for buildings in the right to the security law** (see recital 58 CPR).

## Essentials to report:

### 2. The Construction Products Regulation (CPR) EU 305/2011 and the impact on re-use of used and “second-hand” building materials

- The aim of the CPR is therefore no longer to define the safety of building products in the sense of technically concluding full harmonization, **but rather establishes the creation of a common technical language (see recital 54 CPR) as the focus of European harmonization.**
- For the purposes of this Regulation the following definitions in article 2 CPR are crucial:
  - No. 17: “**‘placing on the market’** means the first making available of a construction product on the Union market” ➡ **The product still exists, therefore, it is not possible to make available for the first time!**
  - No. 16: “**‘making available on the market’** means any supply of a construction product for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or **free of charge**” ➡ If there is **no commercial activity**, **the CPR provisions do not intervene**, if so ...

## Essentials to report:

- “Making available on the market” had in mind, like the whole CPR provisions, that a product enters the **supply chain of the European market for the first time**. According to this opinion, for example, it was intended to produce goods that must be stored first before they can be introduced to the market later. In the present opinion, construction products that had already arrived at the end of the supply chain and were installed in a construction plant **had never been thought of construction products that had already arrived at the end of the supply chain and were installed in a construction plant.** Unfortunately, an interpretation exempted from the purpose of the scheme, based purely on the wording, **also allows for the opposite understanding**: After that, products, which were former placed on the market, then removed from it by installation and now again reintroduced into the market, **could also be the subject of CPR (if it would be done commercially)!**



## Essentials to report:

- **Art. 5 CPR contains solutions for the then upcoming re-use problem inside a circular and environmental economy:**
  - “By way of derogation from Article 4 para. 1 CPR and in the absence of Union or national provisions requiring the declaration of essential characteristics where the construction products are intended to be used, **a manufacturer may refrain from drawing up a declaration of performance** when placing a construction product covered by a harmonised standard on the market where:
    - (a) the construction product is individually manufactured or custom-made in a non-series process in response to a specific order, and installed in a single identified construction work, by a manufacturer who is responsible for the safe incorporation of the product into the construction works, in compliance with the applicable national rules and under the responsibility of those responsible for the safe execution of the construction works designated under the applicable national rules;

## Essentials to report:

- (b) the construction product **is manufactured on the construction site for its incorporation** in the respective construction works **in compliance with the applicable national rules** and under the responsibility of those responsible for the safe execution of the construction works designated under the applicable national rules; or
- (c) the construction product **is manufactured in a traditional manner or in a manner appropriate to heritage conservation and in a non-industrial process for adequately renovating construction works officially protected as part of a designated environment or because of their special architectural or historic merit, in compliance with the applicable national rules.”**

## Essentials to report:

- In conclusion, there seems to be
  - not “only” a potential national legal problem, if national law is more strict than EU law,
  - but, potentially, also a possible negative threat for the re-use of products including CH-relevant products (if it would be done commercially!)
- This means that member states, who shall be confronted with this problem, should seek for **a clarification by the EU Commission** or for a **change or an adaption to their national law.**



### 3. Update of the EHLF Operational Guidelines

- Our present **mandate** is and remains our main focus. A priority will stay the ability to improve and to influence “EU Legislation under revision”:

#### “2. Mandate

2.1 The EHLF is a standing committee of the European Heritage Heads Forum (EHHF). The actions of the EHLF are restricted to information gathering and the impact assessment of EU legislation and EU policy development regarding cultural heritage and communicating them to relevant parties.

2.2 The EHLF is not a legal entity and has no budget.

2.3 The EHLF may not, as a body, undertake political lobbying activities. Such activity remains the prerogative of the national competent authority and their national governments.

2.4 Individual EHLF members may, as representatives of their national administrations, undertake independent or joint political lobbying activities if and when these are part of their national authority competencies.

## Essentials to report:

- Due to President Jean-Cl. Junckers “Better Regulation Agenda” and an increased attention for CH at the EU level, rather **no potential negative or dangerous threats for CH** had to be recognised!
- **No guarantee**, what will happen in the future (perhaps from June 2019 on)?!
- Far most of the EHLF Members have made the experience that **there is a need also to debate and reflect on other (also legally) relevant issues.**
- Therefore, the **EHLF Members decided unanimously to make an amendment (only) to its “Tasks” with the new no. 1.3:**

### **“1. Task**

1.1 To ensure that improved and timely information on the development and consequences of legal acts developed by the European Union which may impact on cultural heritage are conveyed to the national competent authorities.

1.2 To follow and review developments in EU policies of relevance to cultural heritage and inform the national competent authorities.

**1.3 At the request of National experts, to share best practice and challenges on national legislation and management practices that impact on cultural heritage.”**

## Essentials to report:

### 4. Representation of the EHHF Members **in the** Standing Committee **EHLF**

- It stays important for our common goal not only to develop our Cultural Heritage network, but also to protect our local, regional, national, European and World Cultural Heritage against potential legislative threats.
- To reach this goal, **it is important that all EU-/ EEA Member States are represented in the Standing Committee EHLF!**
- The EHLF Members therefore ask the Heads of all, but particularly urgent the thirteen “missing” EU-/ EEA-Members (s. written report) once again about **functioning contact addresses of national delegates** who are ordered and willing at least **to receive eMails and give answers in time**, better still **to actively participate in the EHLF work!**

## Essentials to report:

- Conclusions:
  - Check the appointed national representatives in the EHLF,
  - If necessary, appoint a new EHLF member,
  - Transmit contact addresses to the EHLF Secretariat and
  - Share best practice and challenges on national legislation and management practices that have impact on cultural heritage at the request of National experts.



## Essentials to report:

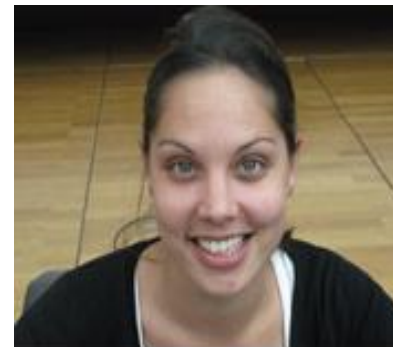
### 5. (Re-) Election\* of the Members and the Chair of the EHLF Secretariat



Vera Ameels  
Belgium (Flanders)



Tove Elise Ihler \*  
Norway



Alexandra Warr-Coxen  
United Kingdom  
(England)



Jacek Buonaventura Brudnicki  
Poland



Wolfgang Karl Göhner  
Germany  
Chairman



Juha Maaperä \*  
Finland

## Essentials to report:

### 5. (Re-) Election of the Members and the Chair of the EHLF Secretariat



**Dr. Terje Nypan**  
**Norway**

**Sincere and heartfelt thanks for  
your construction and leadership work,  
your outstanding commitment and  
your comradely teamwork to  
  
our founder and first chairman:**

2017-2018-2019...

European Cultural  
Heritage Year

SHARING HERITAGE

