



### German Court Challenges EU Food Denominations!

EU Food law defines a lot of legal names for food. There is a significant number of denominations that are reserved for defined products. In some sectors, even allusions to defined legal names are not allowed. This applies, among others, to dairy products, wine, spirit drinks and all protected geographic indications. Thus, the European Court of Justice (ECJ) ruled that there can't be a "Tofu-butter," since it is not made from milk. And a German whisky could not be called "Glen Buchenbach" since this was seen as an allusion to Scotch whisky. The protection of such legal names is absolute, irrespective of whether the allusion is misleading to the consumer.

Now a German court is questioning this system. The District Court in Potsdam must rule on a product that is mainly aromatised water and was marketed as "non-alcoholic gin." It was clear from the EU-Spirits Regulation that this denomination could not be used, since there was no real gin involved. However, the court also found that the EU had no legitimate reason to protect denominations like gin or others, when they are used to describe other products in a non-misleading way. It says this is a violation of the freedom to conduct business granted under the EU Charta of fundamental rights and has forwarded the case to the ECJ, with a request to declare the relevant legislation (protecting denominations like Gin) to be invalid.

Squire Patton Boggs Partner Dr. Christofer Eggers, procedural advisor of the Federal Republic of Germany in this case, comments: If the ECJ should agree with the German court, the whole system of protecting geographical indications or legal denominations would be compromised. It then would lie in the discretion of any national judge to decide if the EU had a legitimate interest to define food categories. That would be a major setback for the agricultural market organisation.

### Deposit Return Scheme (DRS) Regulations for England and Northern Ireland Laid in Parliament

[The Deposit Scheme for Drinks Containers \(England and Northern Ireland\) Regulations 2024](#) have been laid in Parliament.

The regulations are in draft form currently, but if implemented in this form, the scheme will require that from 1 October 2027, anyone in England or Northern Ireland who is supplied with an in-scope container drink must pay a deposit to the supplier of the drink, and a person who returns an empty container to a collector will be entitled to a refund. It will also be possible to return and claim a refund for certain empty containers from drinks which were purchased outside of England and Northern Ireland.

The legal framework for the Scottish DRS has existed for some time under the [Deposit and Return Scheme for Scotland Regulations 2020](#) (implementation was previously delayed). The Welsh government has separately [announced](#) that it is withdrawing from a UK-wide DRS.

[Responses to Parliamentary questions](#) confirm that it is intended that a Deposit Management Organisation, who will run the scheme, will be appointed in April 2025. We will continue to monitor these developments, which will impact producers and distributors of drink products in certain types of packaging.



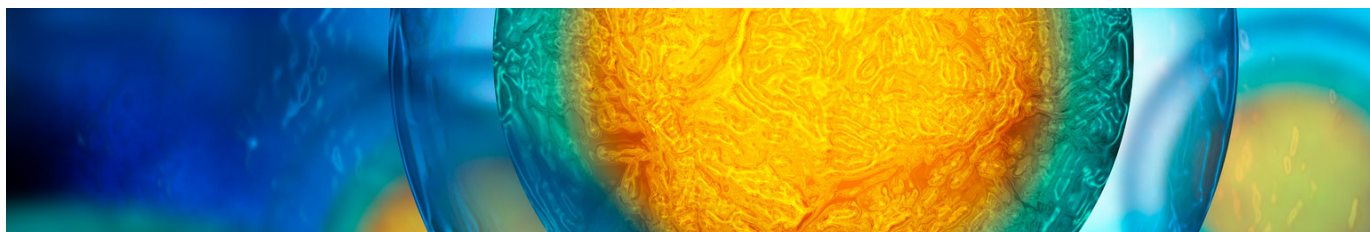
## The UK's Competition and Markets Authority Publishes its Findings Report on Loyalty Pricing in the Groceries Sector

On 27 November, the UK's Competition and Markets Authority (CMA) published its [Report](#) on loyalty pricing in the groceries sector. Having examined about 50,000 items, the CMA found "very little evidence" of UK supermarkets inflating their usual prices to make loyalty promotions seem like a better deal, meaning that loyalty-priced products almost always (in 92% of cases) provide genuine savings for customers. The Report found that 55% of respondents believed that non-member prices had been inflated to make loyalty deals more appealing, but the CMA found little evidence of this.

While most loyalty prices offered a genuine saving, the evidence showed that, by shopping around, customers might still be able to source items more cheaply from elsewhere, than those on a loyalty deal. That said, one of the Report's key findings was that customers could make an average saving of 17-25% buying loyalty priced products at the five supermarkets examined (Tesco, Sainsbury's, Waitrose, Co-op and Morrisons). It should be noted that, while Iceland, Marks & Spencer, Ocado and Asda do also have loyalty schemes, these do not offer loyalty pricing.

In terms of data gathering by UK supermarkets, the CMA found that they did not see evidence that gave rise to concerns about consumer law breaches in respect of collection and use of personal data (although supermarkets were less transparent about the onward sale of anonymised and aggregated data to third-parties).

Overall, the CMA has concluded that shoppers can, on the whole, be confident about the loyalty promotions and pricing offers that they are seeing.

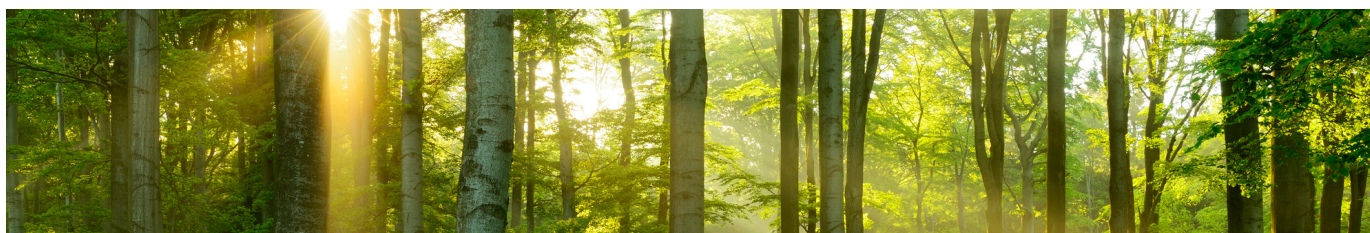


## UK Food Standards Agency (FSA) Announces Sandbox Programme for Cell-cultivated Products

The FSA [announced](#) in October, that it has been appointed to run a programme to ensure the safety of "cell-cultivated products", for consumption by consumers. Cell-cultivated products are products made from plant or animal cells, which are grown in a controlled environment.

The announcement details not only the programme itself, but the commercial opportunities, noting that the UK is one of the largest potential markets for cell-cultivated products in Europe.

Currently, there are no cell-cultivated products approved for human consumption in the UK. They would require approval under the novel food regime, but the "sandbox" programme will allow evidence to be collated.



## EU Deforestation Regulation – Delay and New “No Risk” Category

This quarter has been somewhat dramatic in terms of the EU Deforestation Regulation (Regulation). As reported in [September](#), the Regulation is set to apply to seven commodities, including cattle, cocoa, coffee and palm oil, and will require operators and traders to ensure that relevant products are deforestation free and have been produced in accordance with the national regulations of the respective country of production.

In October, the European Commission proposed a delay to implementation to allow "phasing-in" time; and, in November, the European Parliament endorsed some of the amendments proposed by the European People's Party (EPP) Group, as well as the European Commission proposal for a one-year delay. Certain amendments covering provisions related to traders and a proposed two-year delay were withdrawn and not voted on. Ultimately, the EPP amendments that were endorsed (in some cases only a few votes apart) are focusing on a new category of risk, namely countries posing "no risk" of deforestation, which is added to existing risk categories (low, standard and high).

Our [blog](#) contains further details on the next steps for the Regulation. The implementation delay will only become effective after the publication of the Regulation in the Official Journal of the EU, expected to enter into force three days after the publication. The benchmarking system is expected to be adopted by the European Commission by June 2025.





## UK Private Members' Bill on Binding Limits for Poly and Perfluorinated Alkyl Substances (PFAS) in Drinking Water

PFAS are a large group of chemicals with a wide range of applications that are persistent and bio-accumulative, earning them the title of “forever chemicals”, because they do not break down.

We have [previously reported](#) that the UK Drinking Water Inspectorate (DWI) had issued a [consolidated guidance document](#) to water companies with requirements on PFAS monitoring, risk assessment and strategy in relation to public water supply systems. This is in addition to the DWI's [general guidance on PFAS and forever chemicals](#).

A [private members' bill](#) has since been introduced to the UK Parliament calling for legally binding limits on PFAS in drinking water. In the first reading of the bill, the Liberal Democrats stressed that there was “a clear need for European alignment”, citing the strides taken by the EU in this space and the UK's “snail's pace” since Brexit and its departure from the EU REACH regime. The next stage for this bill, the second reading, is scheduled to take place on Friday 24 January 2025. It is supported by the Royal Society of Chemistry, UK CHEM Trust, Wildlife and Countryside Link and the Marine Conservation Society.

Drinking water is regulated separately from food in the UK. Water intentionally incorporated into a product during its manufacture, preparation or treatment, is governed by “food” laws (as opposed to water that has not yet come out of a tap, or which has not yet been used in a food production facility, which is still regulated as drinking water). Natural mineral water, spring water and bottled drinking water, is also separately regulated. As such, even this Private Members Bill comes into force, it would not have direct impact on “food” products containing water. Nevertheless, it does indicate a continuing “direction of travel” of increased scrutiny of PFAS substances, where there is a possibility of human consumption, which may have implications for the regulation of food products, in the future.

For the latest PFAS developments in Europe, please see our [Sustainability in Business blog](#), which includes a progress update on the EU REACH restriction proposal and the opinions of the European Chemical Agency's Risk Assessment Committee (RAC) and Socio-Economic Analysis Committee (SEAC), which we understand will continue into 2025.



## Progress with EU Packaging and Packaging Waste Regulation

In December, the EU Council has formally adopted the Packaging and Packaging Waste Regulation (PPWR).

The PPWR is intended to reduce packaging waste. Its measures include restrictions on particular types of single-use packaging (including packaging for fresh fruit and vegetables, and packaging used in cafes and restaurants, as well as individual portion-packs), binding targets on reuse of drinks packaging (alcoholic and non-alcoholic) and packaging reduction targets. Final distributors of beverages and take-away food will be required to offer consumers the option of bringing their own container; and to offer 10% of products in a reusable packaging format by 2030. A [press release](#) from the European Parliament contains further detail.

The PPWR will impact food businesses based in the EU, but also those business outside of the EU, which are supplying into the EU market.



## Widespread Allergen Contamination and Recalls Reminder of Safety Issues

In November, the UK's Food Standards Agency (FSA) [lifted its precautionary advice](#) to consumers not to eat mustard due to peanut contamination. This advice had been issued following a number of products containing mustard being found to be contaminated with peanut, but this issue is ongoing and in December, there was an [announcement](#) from the FSA that its ongoing investigation had led to further UK recalls of mustard products from food business that import mustard to manufacture spice products including curry powders, seasonings and spice blends from India, which are used in other products such as ready meals and snacks. It is likely that the FSA will contact known customers of the importer to warn them of the risk.

Mustard (and products of mustard) and peanuts (and peanut products) are two of the 14 allergens that it is mandatory to declare on ingredients lists for prepacked foods (and to provide information on for non-prepacked foods). However, where either ingredient is not declared as an ingredient, not only is this a breach of food information obligations, but it also makes the food unsafe for any consumer that has an allergy (because they will not be aware that it contains the ingredient that they're allergic to). This is the reason that recalls of product, where there is contamination by an allergen, is usually required to protect consumers.

Information that is available from [Allergy UK](#) confirms that peanut allergy is relatively common; and symptoms can range from mild reactions to severe anaphylaxis.

The contamination issue also impacted the EU market. It was notified on the RASFF (Rapid Alert System for Food and Feed) portal by the competent authority in Ireland.



## European Court of Auditors Food Labelling Report: Recommendations for EU Commission

The [report](#) published by the European Court of Auditors in November 2024, warns of the risk of consumers "getting lost" in a "maze". It concludes, overall, that food labelling in the EU can help consumers make better-informed decisions when purchasing food, but there are notable gaps in the EU legal framework as well as weaknesses in the monitoring, reporting, control systems and sanctions, which leads to consumers being confronted with labels that can be confusing or misleading, or that they do not always understand.

It also outlines that member states are required to set up control systems and check whether food companies implement labelling rules correctly. However, even though these systems are in place, checks on voluntary information and online retail are not sufficient; and as regards infringements, fines are not always dissuasive, effective or proportionate. This perhaps hints that there might be moves towards mandating or recommending more routine surveillance, particularly for online sales and minimum penalties for certain breaches.

There is an interesting annex to the report, which includes examples of labelling practices that could mislead consumers and they are categorised into "groups, including, for example, practices relating to the absence of certain elements such as additives, or preservatives; practices regarding "uncertified" qualities, such as the "fresh," or "natural" nature of the product; and the lack of a harmonised approach to "alcohol-free" labelling practices". Food business operators that use such labelling should review whether practices could fall within the potentially misleading practices detailed in this annex, as this might be grounds for action on the obligation under food information requirements, not to mislead.

This is only a report, containing recommendations for the EU Commission, including recommendations to address gaps it has identified, make more effort to analyse labelling practices and strengthen member states checks on voluntary labels and online retail. It remains to be seen what the response of the EU Commission will be.



## EU Forced Labour Regulation, Report on UK Modern Slavery and the Potential Impact on Food Supply Chains

In December, the EU published its [Forced Labour Regulation](#), which will come into force in December 2027; and will prohibit products made with forced labour from being sold on the EU market. Further details on the legislation are outlined in our Sustainability in Business [blog article](#) on this topic.

Trade press in the UK [reported](#), in Spring 2024, on charity data showing forced labour is on the rise in food supply chains, particularly in agriculture, hospitality and manufacturing. As such, any business supplying food and drink products in the EU, including those who export to the EU market, is likely to find itself under increasing scrutiny from customers in the EU, when they endeavour to carry out due diligence which demonstrates their compliance with this new regime.

As detailed in our blog, for the purposes of the new Forced Labour Regulation, the use of forced labour must be considered at all stages of the upstream supply chain. This will include the extraction, harvest, production, manufacture or processing of a product, including its parts; and will also include the working or processing related to a product. Food businesses supplying in, or to, the EU, should start to prepare for the implementation of this regulation, including analysing products and ingredients, in view of the upstream operations.

Meanwhile, in the UK, the government has [responded](#) to a House of Lords [report](#) on the modern slavery regime. This report also highlights agriculture as a particular area where modern slavery occurs, noting particular risks for migrant workers on visas, as well as meat works, hospitality, manufacturing and fishing, which are cited as examples of jobs which are seasonal and low-paid, or where other forms of exploitation are prevalent.

The government response states that it is “reviewing how it can strengthen penalties for non-compliance [with the Modern Slavery Act 2015] and create a proportionate enforcement regime”; but no additional legislative measures to tackle forced labour have yet been made public. What is clear from the government response, though, is that they will seek to recognise the “very real difference between migrants who come [to the UK] willingly and those who come as they are being trafficked as victims of modern slavery”. That will be welcome news to food business operators reliant on lawful migrant labour.



## Contacts

### Hannah Kendrick

Partner, Leeds  
T +44 113 284 7620  
E [hannah.kendrick@squirepb.com](mailto:hannah.kendrick@squirepb.com)

### Nicola Smith

Partner, Birmingham  
T +44 121 222 3230  
E [nicola.smith@squirepb.com](mailto:nicola.smith@squirepb.com)

### Christofer Eggers

Partner, Frankfurt  
T +49 69 1739 2444  
E [christofer.eggers@squirepb.com](mailto:christofer.eggers@squirepb.com)

### Sam Hare

Senior Associate, London  
T +44 207 655 1154  
E [sam.hare@squirepb.com](mailto:sam.hare@squirepb.com)

### Marion Seranne

Partner, Paris  
T +33 1 5383 7400  
E [marion.seranne@squirepb.com](mailto:marion.seranne@squirepb.com)

### Francesca Puttock

Associate, Birmingham  
T +44 121 222 3215  
E [francesca.puttock@squirepb.com](mailto:francesca.puttock@squirepb.com)

### Thomas Delille

Partner, Brussels  
T +33 1 5383 7400  
E [thomas.delille@squirepb.com](mailto:thomas.delille@squirepb.com)