Expansion of UK Soft Drinks Levy in Autumn Budget

The UK government has announced that the soft drinks levy will be extended, kicking in at 4.5 grams of sugar per 100 millilitre, as opposed to the current 5 grams. This will apply from 1 January 2028, unless products have been reformulated before then. The 4.5 grams level was somewhat of a relief for drinks producers, who had feared a 4 gram threshold, which would have meant further reformulation for products that had already been reformulated to somewhere between 4 and 4.5 grams. More products will also be included in the levy, as the scope has been expanded to include pre-packed milk-based and milk-alternative drinks with added sugar, such as milkshakes, flavoured milks, sweetened yoghurt drinks, chocolate milk drinks and ready-to-drink coffees. This will be another "hit" to businesses in the UK, operating with small margins and already struggling to meet the costs of other legislative changes, such as Extended Producer Responsibility and the National Insurance rise.

UK Labour and Employment Issues for Food Business Operators in 2026

The Employment Rights Bill, soon to become the new Employment Rights Act, is "the" employment law topic that should be on every food business operator's agenda for 2026. The new act will make wide-ranging changes to employment law, from an extension of unfair dismissal protection to greater rights for trade unions. At the time of writing, the bill is stuck in parliamentary "ping pong", but it is expected to receive royal assent shortly.

In a significant about-turn, the UK government recently announced it will not be proceeding with its plans to introduce day-one unfair dismissal rights and will instead be introducing a six-month qualifying period for unfair dismissal claims. In its press release, it said it was making these changes to ensure the bill receives royal assent, and it can keep to its published delivery timeline for the other changes in the bill. The government will be issuing 26 new consultations dealing with further details of the changes. It has been keen to stress that there will be genuine consultation with employers and that it was not a "zero sum" game pitting employees against employers. Get up to speed on the latest position by watching our recent webinar. Recording link here.

European Court of Justice (ECJ) Ruling: Protection of Designations in EU

On 13 November 2025 (C-563/24), the ECJ handed down a landmark ruling that affects not only the food sector, but also traditional geographical indications for other artisanal and industrial products from December 2025 onwards. Squire Patton Boggs partner Dr. Christofer Eggers in the Frankfurt office was assistant counsel of the German government in the case.

The Potsdam Regional Court in Germany had referred the question to the ECJ as to whether a far-reaching protection of designations falls within the competence of the EU. In the underlying case, the Potsdam Regional Court had concluded from EU Spirits Regulation 2019/787 that a designation such as "alcohol-free gin" was not permissible for an alcohol-free spirits alternative. The opinion of the Potsdam Regional Court was that there was no reasonable justification for this ban; consumers would not be misled; and the relevant business would be unreasonably prevented from correctly describing and marketing its new product.

The Potsdam Regional Court viewed this as a violation of the European Charter of Fundamental Rights, in particular of entrepreneurial freedom. However, the ECJ clearly rejected this position; and confirmed that the EU does indeed have authority to impose such far-reaching designation bans. In the specific case, the ban on the designation "non-alcoholic gin", therefore remains in place. Dr. Christofer Eggers commented that, in this case, "the ECJ clearly states that it is irrelevant that the legally prescribed designation is accompanied by the addition 'alcohol-free'. The allusion to the protected designation remains prohibited, even if it does not lead to misleading consumers". This decision will also have relevance to other protected designations under EU law. For further detail, read our article on this case.

House of Lords Report on Exemption for Brand Advertising from UK Advertising Restrictions on Foods High in Fat, Salt or Sugar (HFSS)

We reported in September's edition of newsBITE, that regulations had been published to exempt brand advertising from the HFSS advertising restrictions, now coming into force on 5 January 2026, which will impose new restrictions banning ads for "identifiable" HFSS foods or drinks, from being shown on Office of Communications (Ofcom)-regulated TV services and on-demand programme services between 5:30 a.m. and 9 p.m. in the UK, or at any time in online paid-for advertising.

These regulations have since come before the House of Lords Secondary Legislation Scrutiny Committee. The committee's published report, issued on 16 October 2025, refers to exceptions within the legislation and expressed some concerns that close monitoring should be undertaken to avoid a "potential loophole".

The report notes that "these regulations provide for an explicit exemption for brand advertising from the restrictions using a two-stage process. First, advertisements will be assessed on whether they are for an "identifiable" less healthy food or drink product, as set out in the [Health and Social Care] 2022 Act. If not, the advertisement would not be restricted. The [Department of Health and Social Care] expects that the majority of brand advertisements would already be out of scope of the restrictions based on this test. If the advertisement could be for an identifiable less healthy product, a second assessment is made as to whether the advertisement would fall under the definition of brand advertising as set out under these regulations…. These regulations define a "brand advertisement" as one that promotes a brand, including the brand of a range of products. They further clarify that an advertisement cannot be considered a brand advertisement, and therefore cannot benefit from the exemption, if it depicts a specific less healthy product, for example, by way of name, text, imagery, logo, audio or other branding techniques. This means that advertisements for a specific, identifiable product will always be subject to the restrictions".

This is a helpful breakdown of the suggested two-stage assessments that food and drink businesses should undertake to determine whether a particular advert is in scope, or exempt.

Advertising Standards Authority (ASA) Guidance on Advertising of HFSS Products

Since publication of the House of Lords report, referenced above, the expected guidance from the ASA on implementation of the HFSS advertising restrictions in light of the new exceptions, has also now been published. Key highlights of the guidance include:

- What ASA's approach to assessing individual advertisements under the identifiability test will be (in particular, the ASA will place weight on the content of the advertisement and what the notional "average consumer" is likely to perceive the advert is for – the test can be met even if there is no direct reference to, or depiction of, a less healthy product)
- The circumstances when the brand advertising exemption will not apply, including when an advertisement depicts a "specific" HFSS product, and when an advert promotes a brand that is also the name of a specific less healthy product, in certain circumstances (although, the brand advertising exemption will still apply to advertisements for brands that name a specific less healthy product where certain exceptions apply)
- The prohibition applicable to paid for advertising, will not apply to advertisers' own marketing communications appearing on their own websites (for example, online groceries' platforms, customer service sites, loyalty scheme portals or corporate and social responsibility sites), or in other non-paid-for space online under their control such as marketers' own social media channels or apps where no payment for the placement of an advertisement is involved (subject to certain circumstances, which the guidance details)
- Where consideration is provided for an influencer to create content for publishing on the internet that depicts a specific less healthy product and to publish it on the influencer's social media channels, the resulting content is likely to be prohibited (except for certain circumstances)

For further detail, please see our blog.

EU Directive on Pay Transparency: Now's the Time To Start Preparing!

The deadline for the transposition of the Pay Transparency Directive, 7 June 2026, is fast approaching, even if EU member states are acting like it's not. Only a couple have already published draft legislation, but that should not keep food businesses with employees in EU countries from preparing for what's to come. The framework provided by the directive is sufficiently clear on what needs to be done, and there is likely going to be little gold-plating in national legislation.

A couple of highlights of what the directive will bring:

- Applicants are to be informed of the initial pay or pay range they may expect for the job they're applying for
- Pay setting and pay progression criteria are to be made accessible to employees in service
- Employees will have the right to receive information on how they compare to their average male and female colleague performing the same work or work of equal value
- Companies with 100 employees will be required to prepare a pay gap report every (three) year(s)

Now's the time to start reviewing those policies and doing some testing of what you would need to respond to employees, if they request this pay information after June 7th. Our Labour & Employment team is of course available to guide you along the way!

Significant Environmental River Pollution Lawsuit Targets the UK Food Sector

A significant claim, described by the law firm acting for the claimants, as the largest environmental lawsuit in relation to alleged damage occurring in the UK, was filed in September, with the defendants including those operating in the food and drink sector. The claim relates to pollution in the River Wye, and is being pursued by a consumer law firm, on behalf of nearly 4,000 residents, local businesses and river users allegedly impacted by the pollution.

The defendants include chicken producers, as well as the regional water company, with allegations (which have been publicly denied) that the spreading of manure and nutrient runoff from poultry farming caused ecological harm. The claimants are seeking multi-million-pound damages, as well as a court order compelling the clean-up of the river.

While the specifics of this case are most relevant to those involved at the farming end of the food chain, group litigation or class actions are on the rise more generally in the UK, due to a mixture of procedural changes, increased availability of third-party litigation funding and US claimant law firms opening up in the UK.

As this case shows, food companies are likely to be an area of focus for claimant-side law firms. The firm behind the River Wye case has also publicly stated that it is exploring potential legal action against food manufacturers selling ultra processed foods (UPFs) and alcohol, following a high-profile lawsuit issued in the US at the end of 2024 in relation to UPFs. While that particular US case was dismissed for lack of detail, that is unlikely to be the end of the story. Those operating in the food and drink sector therefore need to be aware of the risk of group claims for their business, what to watch out for and how to respond to any threatened claims or information requests.

Mariana Dam Collapse Group Action – Important Implications for UK-based Companies With Overseas Operations

In another development in the fast-moving group actions world, in a judgment handed down in November 2025, the English High Court has found the Anglo-Australian mining giant BHP liable for the 2015 collapse of the Fundão tailings dam in Brazil. The claim, brought by over 600,000 Brazilian individuals, companies and municipalities, with approximately £36 billion sought, represents one of the largest group actions ever heard in England, and, while subject to Brazilian law, is one of the most significant English judgments relating to overseas environmental damage to date. Its implications extend to UK-headquartered multinationals operating abroad, particularly in sectors where environmental risk is high such as in the food sector, whether due to overseas manufacturing or growing operations. In future cases involving environmental damage and/or personal injuries, parent-subsidiary governance structures will continue to be closely scrutinised. It reinforces the need for UK-based businesses to review their approach to the oversight of, and policies applicable to their overseas operations, factoring in the litigation risks highlighted by this case and to adopt a coordinated approach to cross-jurisdiction litigation exposure. For further details, please see our article.

Further Delay and Simplification of EU Deforestation Regulation

In early December, the EU's co-legislators reached a political agreement on the EU Deforestation Regulation (EUDR).

Key changes include:

- 1 year delay of application for large and medium operators (i.e. 30 December 2026) and delayed application for small and micro-operators (i.e. 30 June 2027)
- Review clause, whereby the European Commission shall issue a report on the impact of the legislation with possible simplification amendments by 30 April 2026.
- Simplified due diligence statements for micro and small operators

Next steps:

- The European Parliament's plenary is set to adopt the final law on 16 December
- Member states will follow suit via written procedure, before the Christmas break
- The adopted law would then be published in the Official Journal of the EU as a priority, before the existing deadline of 30 December 2025

The EUDR relates to the following commodities: cattle; cocoa; coffee; palm oil; rubber; soya; and wood. It 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.

Food and Drink Retailers: UK Government Publishes Guidance on Displaying Prices from 6 April 2026

The implementation date for significant reforms to the to the Price Marking Order 2004 ("PMO" and "PMO Reforms") was delayed earlier this year, to 6 April 2026 (originally planned for 1 October 2025). The main provisions include:

- If metric unit prices are displayed, they must be shown using standard measurements, as appropriate.
- Prices must be unambiguous, easily identifiable, clearly legible and use a font size that is clear and of reasonable size.
- Delivery and postal charges for products (including any taxes) must be unambiguous, easily identifiable and clearly legible
- Where a retailer offers a product at more than one selling price, for example a discounted price owing to a retailer's loyalty scheme, then the retailer is required to show each selling price and unit price together with the conditions that need to be satisfied, for the different prices to apply
- Exemptions to mixed product packages (for instance, hampers)

The government has issued guidance on the reforms. The PMO Reforms are designed to improve price transparency and provide tools for consumers to make informed decisions when purchasing products. The guidance interprets the main provisions of the PMO and helpfully provides practical examples to aid the PMO's reading.

Key points of the guidance include:

Definitions – The PMO Reforms include amended definitions of "selling price" and "unit price". The guidance provides examples of these definitions, for example, if the selling price for box of cereal A is £3 and the packaged quantity which is for sale weighs 500 grams, the unit price is £6 per kilogram. The PMO Reforms also introduce a new definition of "deposit". The guidance notes that deposits are not part of the unit or selling price because the deposit will be an extra returnable payment to be made in addition to the price, which will not necessarily depend upon the weight or volume purchased. This is an interesting definition to include, given current proposals to introduce deposit return schemes for drinks containers in the various nations of the UK.

Obligation to indicate unit pricing –The guidance provides practical examples of when businesses must display unit prices and when it is not required, such as when goods are sold individually, products are part of a package or when prices are reduced due to damage or deterioration.

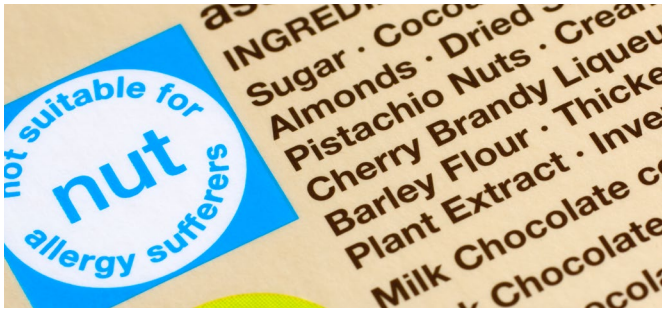
Presentation standards – The PMO Reforms include that information, such as selling price, must be unambiguous, easily identifiable, clearly legible and displayed using a font that is clear and of reasonable size. The guidance supplements the section and suggests that retailers may meet the requirements of the section in different ways, including by considering using as large a letter height as possible with adequate spacing, using white space and avoiding text wrapping.

General reductions – Article 9 of the PMO allows businesses to use general notices regarding reductions instead of requiring previous indications of selling and unit prices to be changed. The PMO Reforms clarified that Article 9 may be relied upon when the characteristic of the general reduction mean it is not reasonably practicable to indicate the reduced selling or unit price. The guidance provides examples of this, such as when a store that stocks several different ranges of paint sold in different sizes runs 20% off all paint over a bank holiday weekend. Due to the short period of the offer and the range of paint included, it would not be reasonably practicable to alter the prices.

The guidance will be of particular interest to food and drink retailers who should update in-store and online displays as required and carefully review pricing and promotional material to ensure compliance with the PMO Reforms.

European Commission Updates Food Additives Rules to Align with Not-So-New Nutrition Legislation

On 15 October 2025, the European Commission published Commission Regulation (EU) 2025/2058 amending Annexes II and III and correcting Annex II of the EU Food Additives Regulation (EC) No 1333/2008. This long-awaited update reflects changes introduced by Regulation (EU) No 609/2013 on foods intended for specific groups, which replaced Directive 2009/39/EC and repealed related commission directives. The amendment notably renames the existing category 13 to "Foods intended for specific groups as defined by Regulation (EU) No 609/2013" and introduces a new category 18 for "Processed foods not covered by categories 1 to 17". These changes aim to ensure consistency between food additive rules and the current legislative framework for foods with particular nutritional purposes.



UK Food Standards Agency (FSA) Position on the Codex Precautionary Allergen Labelling Standard including Allergen Thresholds

The Codex Committee on Food Labelling for the joint FAO (Food and Agriculture Organisation of the UN) and WHO (World Health Organisation) Food Standards Programme, proposed, back in 2019, a global standard on Precautionary Allergen Labelling (PAL), often known as "may contain" labelling. This includes the use of threshold levels for each allergen, below which labelling would not be required.

In the board papers for the December 2025 FSA Board Meeting, the FSA position is set out for discussion. On balance, the FSA considers that the evidence available supports the international approach set out in the codex proposals. It considers that the benefits of a global standard would outweigh the potential risks (which are stated to include the risk that smaller portions might not carry a PAL because the weight of protein is too low, although the gluten level would be above the threshold, but also challenges around resource requirements for risk assessment and allergen management, and adequate test methods).

The board is being invited to agree a recommendation that the Codex proposals for a global standard should be supported.

Proposed Bisphenol A (BPA) Ban for Food-contact Materials in UK

The UK's FSA has issued a public consultation on a proposed ban of BPA and other Bisphenols (including BPS and BPF), as well as bisphenol derivatives in food contact materials (FCMs). The consultation is open until 24 December 2025. The proposed UK ban would bring closer alignment with recent EU legislation, which prohibits the use and trade of BPA, its salts and other hazardous bisphenols in a range of FCMs, including adhesives, rubbers, plastics, varnishes, coatings, ion-exchange resins and printing inks.

Food business operators and packaging businesses supplying onto the UK market should assess the potential impact of such a ban, which may impact food production equipment, as well as packaging. For further information, please see our blog.

UK's Food and Drink Federation Issues Guidance on Changing Food and Drink Labels

The trade association for food and drink manufacturers, the Food and Drink Federation (FDF) online guidance addresses the reasons that labels are used, the reasons that labels need to change from time to time, as well as the process for changing a label. The guidance sets out that many months of work are involved with changing labels, to ensure compliance and that there are various stages (including regulatory checks, re-design, arranging production logistics, barcode changes, approval processes and write-off of old stock, among other things) and associated costs. The guidance notes that the impact of write-off can be mitigated through a sufficiently long transitional period of two years, to allow for retail sell-through. This guidance may be useful to food businesses who want to advocate for minimal imposition of label changes.

German BMUKN Launches Consultation on Packaging Act Amendments (VerpackDG)

On 17 November 2025, the BMUKN initiated a public consultation on a draft law to align the German Packaging Act (VerpackG) with EU Regulation 2025/40 (PPWR). The draft proposes establishing an Organization for Reduction and Prevention Measures (ORPM), funded by a flat fee of five euros per tonne of packaging.

This approach raises concerns under Article 43(5) PPWR, which requires measures to be proportionate and non-discriminatory, avoiding trade barriers and preventing shifts toward lighter packaging materials. A weight-based fee structure would inevitably impose higher costs on producers of heavier packaging types such as glass and metal.

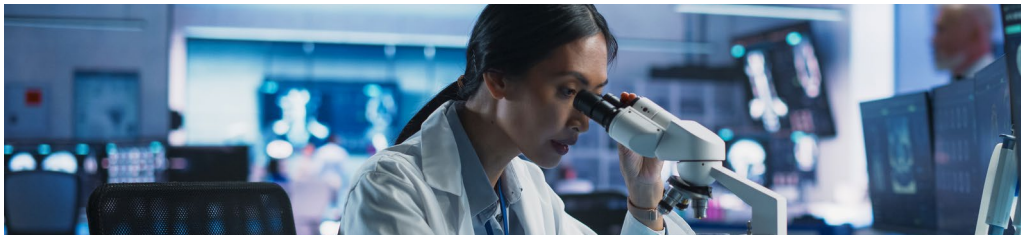
Christian Böhler, regulatory lawyer at our firm, advises: "During the consultation, stakeholders can submit comments on the draft. Manufacturers or users of heavier packaging should carefully assess whether it is worth engaging with this issue."

Green Claims: The European Commission Publishes a New FAQ

Less than a year before the Empowering Consumers for the Green Transition Directive (EU) 2024/825 (ECD) becomes applicable, the European Commission has published a FAQ clarifying several important points:

- **Scope of the directive** – Corporate communication and sustainability reporting are generally not covered unless they are used for voluntary advertising or marketing directed at consumers.
- **Definition of "generic environmental claim"** – Elements that imply environmental impact, such as colours or images, are not considered generic environmental claims on their own unless combined with written or oral statements.
- **Impact on brand and product names** – Names protected by intellectual property rights can still qualify as environmental claims and fall within the scope of the ECD.
- **Carbon neutrality claims** – Generic claims of carbon neutrality are in principle prohibited unless the trader can demonstrate recognised excellent environmental performance relevant to the claim. Claims based on greenhouse gas offsetting for products are prohibited. For claims related to the company, they fall under the rules on future environmental performance.
- **Advertising irrelevant benefits** – Traders should avoid claiming features that all comparable products naturally have, similar to the concept in the Food Information to Consumers Regulation (e.g. "gluten-free water", since water is inherently gluten-free).
- **Future environmental performance claims** – Verification must be carried out by independent third-party experts, free from conflicts of interest, with proven competence in environmental matters. This can be a public or private entity, though private auditors are most likely.
- **Use of "organic"** – Still allowed.
- **Vegan/vegetarian labels** – These may be considered sustainability labels if the trader implies environmental or social benefits (e.g. "vegan = better for the planet").
- **Application to existing products** – The rules do not apply retroactively, but from 27 September 2026, all products on the market must comply. Traders may need to over-sticker products or take other corrective measures to avoid enforcement actions by national authorities.

All companies should prepare for the upcoming application of the ECD and closely monitor member states' transposition processes, which have already begun and must be completed by the end of March next year. For more insights on green claims, check out our article.



FSA and Food Standards Scotland (FSS) Publish First UK Safety Guidance on Cell-cultivated Products

Cell-cultivated products are often called "lab-grown meat", but aren't restricted only to meat. The products are made by taking cells from plants or animals, which are then developed into food. The FSA and Food Standards Scotland (FSS) have published the safety guidance online.

One part of the guidance confirms that businesses should apply existing food safety regulations, which relate to products of animal origin, during the production process. This will include legislation relating to general requirements, hygiene of foodstuffs, specific hygiene rules for food of animal origin, official controls, microbiological criteria, food information/ labelling and animal by-products. Hazard Analysis and Critical Control Point (HACCP) Principles are summarised in this guidance, with a note that for cell-cultivated products, operators should: identify and list all physical, biological, chemical, toxicological and allergenic hazards that may reasonably be expected to occur; assess the risk of these hazards; and record conclusions and associated reasoning. However, there is also specific guidance given as to possibilities that should be considered, including the multiplication or survival of pathogens and the introduction of hazards during the production process; as well as guidance on establishing and implementing procedures at critical control points.

The other part outlines scientific requirements for evaluating allergenicity and nutritional aspects of cell-cultivated products, when seeking market authorisation as novel food in Great Britain (via the regulated product authorisation process, which replaced applications to the European Food Safety Authority (EFSA), while the UK was still part of the EU). With respect to nutritional information, the guidance is given in the context of applications for novel food being required to demonstrate that the food is not nutritionally disadvantageous, as compared to the food it might replace. With respect to allergenicity assessment, cross-reference is made to EFSA guidance from 2016. It is noted that the principles for investigation, include not only known allergens used in manufacture, but also what the allergenic potential of new proteins is.

The guidance was developed from the Sandbox programme, intended to support innovation in this area, as reported in a previous edition of newsBITE.

European Commission Publishes the Bioeconomy Strategy

On 27 November the European Commission published its Strategy for a Competitive and Sustainable EU Bioeconomy. The strategy sets out a roadmap to scale up innovation and investment by simplifying regulation, introducing fast-track pathways such as in the future EU Biotech Act which will introduce "for example regulatory sandboxes, fast-track authorisation procedures for microbial solutions for industrial use in the bioeconomy and streamlined permitting for biomanufacturing projects". The strategy also aims at fostering coordination between authorities and agencies (EFSA, European Chemicals Agency (ECHA) and European Medicines Agency (EMA)), creating an online single-entry point for new bio-based products, supports sectors ready for scale-up (including bio-plastics, bio-chemicals, textiles and construction materials), bridges investment gaps, encourages sustainable biomass use, and strengthens circular value chains.

Businesses operating in bio-based sectors in the EU, should have a close look at the Bioeconomy Strategy as it may create opportunities for innovation.

UK National Food Crime Unit (NFCU) Focus Areas – including Enforcement and Collaboration with Other Agencies

The National Food Crime Unit of the FSA has submitted its annual report for the December 2025 FSA Board Meeting. The report details "operational results" in the previous 12 months, largely around enforcement and sentencing; and, in addition, the Board has been asked to agree four areas of focus for the NFCU for 2026:

1. Full use of new investigatory powers to advance investigations towards criminal prosecutions
2. Continued development and enhancing of "prevention" capabilities, but while ensuring a strong deterrent is sustained, and a hostile environment for "food criminals" is maintained
3. Enhanced collaboration with Department for Environment, Food and Rural Affairs (DEFRA) in relation to illegal meat imports
4. Collaboration with international partners, by sharing knowledge and best practice to address emerging threats and common risk areas

This list of focus areas suggests an intention to step up enforcement action, as well as collaboration with other agencies both inside and outside of the UK, to target supply chains in key risk areas that they have identified.

The NFCU Control Strategy identified risk areas for 2025/2026. The risk areas include: the misrepresentation of meat and poultry with regards to origin and status; adulteration and substitution of meat, poultry and dairy; waste diversion; and supply chains with high levels of authenticity risk. Drivers for fraud in the UK herbs and spices market is given as an example of intelligence informed by the key risk areas, to allow the NFCU to issue an industry alert and launch operations to target sampling failures. The report notes that the control strategy priorities now include dairy products, "due to an increase in intelligence in relation to the adulteration and substitution of premium cheese, coupled with observed economic pressures in dairy supply chains".

The operational results, set out in an annex to the report, make for interesting reading. The annex is essentially a list of successful enforcement action. Among the "successes" listed, is a Proceeds of Crime Act (POCA) order for £600,000, which was secured after sentencing for waste diversion (meat unfit for human consumption being diverted back into the food chain). In connection with that investigation, 1.9 tonnes of animal by-products were removed from sale. There is also reference to 16 tonnes of misrepresented basmati rice in counterfeit packaging being removed from the market (leading to five arrests).

The quantities involved highlight that food crime can be a significant enterprise, and food business operators should have adequate procedures in place to guard against such crimes.

Ombudswoman Highlights Procedural Shortcomings in European Commission's Legislative Process

On 25 November 2025, European Ombudswoman Theresa Anjinho announced that she had identified "various procedural shortcomings in how the commission prepared the legislative proposals at issue, which, taken together, amount to maladministration". These findings relate to the preparation of several legislative proposals and how the commission applied its Better Regulation rules, and other procedural requirements when drafting proposals on corporate sustainability due diligence (Omnibus I), countering migrant smuggling and the Common Agricultural Policy. The ombudswoman issued recommendations to address these shortcomings, and notably suggested to the commission to define the notion of "urgency" in the context of the Better Regulation framework, record any internal decisions to exempt legislative proposals from Better Regulation requirements, as well as clearly explaining in the explanatory memorandum accompanying legislative proposals why a derogation was necessary.

Packaging Extended Producer Responsibility (pEPR) – PackUK Invoices Issued, More Detail on Environment Agency (EA) Enforcement Powers and Draft Regulations Published

Since our last newsletter, the first invoices payable under pEPR (the UK-wide scheme requiring packaging "producers" to cover the full cost of managing household packaging waste) have been issued. Under pEPR, fees are payable to local authorities via the scheme administrator, PackUK, and are based on the amount and type of household packaging supplied by producers. The assessment of whether packaging is household packaging or non-household packaging is emerging as a key challenge for producers, and in some instances is leading to invoices being disputed.

In October, the EA published its consultation response on amending its enforcement and sanctions policy by adding a new annex setting out its approach for applying new civil sanctions powers for enforcing pEPR, as well as when it will accept enforcement undertakings (EU). Fixed monetary penalties are £1,000, rising to £1,500 if not paid within 56 days. Variable monetary penalties will be calculated by reference to the Sentencing Council's definitive guideline for environmental offences and will use the civil standard of proof. The new annex also specifies where the EA will, as well as where it will not accept EU.

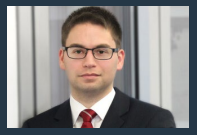
The government has published draft legislation (Producer Responsibility Obligations (Packaging and Packaging Waste) (Amendment) Regulations 2025) to allow producers of food-grade plastics who recycle in closed loops to offset pEPR fees. This follows allegations made by some stakeholders (see for instance the FDF as far back as 2023) that pEPR fees risk penalising those using closed loop recycling systems ("because they will be paying for the end use of a product that won't be discarded" – House of Commons Library, "Packaging extended producer responsibility", 19 November 2025).

On 16 December, the illustrative base fees for Year 2 of pEPR (2026-2027) were published by Defra. This provides us with an indication of the likely fees for each packaging material, although Defra has made clear that they "are likely to change significantly as producers submit more data and compliance is monitored by regulators". While the final fees are not expected until summer 2026, this is a significant publication because, in line with the pEPR principle of modulated fees, it includes red, amber and green fees, which will be of interest to "large producers" that are required to assess the recyclability of their packaging.

Contacts

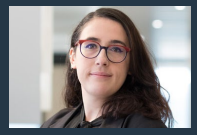
Nicola Smith
Partner, Birmingham
T +44 121 222 3230
E nicola.smith@squirepb.com

Hannah Kendrick
Partner, Leeds
T +44 113 284 7620
E hannah.kendrick@squirepb.com



Christian Boehler
Senior Associate, Frankfurt
T +49 69 1739 2421
E christian.boehler@squirepb.com

Christofer Eggers
Partner, Frankfurt
T +49 69 1739 2444
E christofer.eggers@squirepb.com

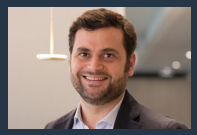


Manon Ombredane
Legal Director, Brussels
T + 32 2 627 1134
E manon.ombredane@squirepb.com

Matthew Lewis
Partner, Leeds
T +44 113 284 7525
E matthew.lewis@squirepb.com

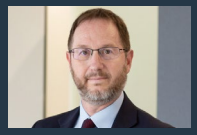
Francesca Puttock
Associate, Birmingham
T +44 121 222 3215
E francesca.puttock@squirepb.com

Deborah Polden
Partner, Leeds
T +44 113 284 7227
E deborah.polden@squirepb.com



Thomas Delille
Partner, Brussels
T +32 2 627 1104
E thomas.delille@squirepb.com

Marga Caproni
Partner, Brussels
T +322 627 7620
E marga.caproni@squirepb.com



Miles Robinson
Partner, London
T +44 207 655 1315
E miles.robinson@squirepb.com

Begonia Filgueira
Director, London
T +44 20 7655 1296
E begonia.filgueira@squirepb.com