



## European Commission Carries Out Dawn Raids in the Energy Drinks Sector

The European Commission has announced that it has conducted dawn raids at a number of premises around the EU for suspected infringements of competition rules. It issued a press release with further details, although there has been no announcement regarding the specific suspected infringements (and, therefore, who might have been harmed by such infringements). The announcement confirms that the European Commission's concerns revolve around companies taking part in a cartel and abuse of a dominant position. It is possible that other companies in the food and drinks sector will be brought into the investigation. Austrian energy drinks maker Red Bull confirmed that its premises had been searched.

This follows an earlier announcement by the Competition Commissioner, that they were working on more cases in the food supply chain, as reported in our December edition of newsBITE .

Dawn raids are a preliminary step in the tackling of suspected anticompetitive practices. The fact that the European Commission carries out such inspections does not mean that the companies are guilty of anticompetitive behaviour, nor does it prejudice the outcome of the investigation. Dawns raids were suspended at the beginning of the lockdowns in early 2020, but inspections started again last year, and the latest announcement indicates they are set to continue.



## Food Sector Stress and Distress: Inflation Challenges

Supply chains continue to present significant challenges in the food sector. While product availability is one issue (e.g. the limited availability of salad items caused by unseasonal weather), businesses are also combatting significant inflation. If businesses have limited ability to pass on input cost inflation to their end customers, this can cause operating profits to be significantly squeezed and present cash-flow challenges.

Businesses should review their supplier and customer contracts closely to consider their options and the strength of their contractual position in resisting input costs increases or the ability to pass those on to customers. Care should be taken with customer contracts that trigger a right for the customer to re-tender in the event of price increases. Whilst price variations are always subject to commercial bargaining positions, knowing the strength (or weakness) of the contractual position is critical when going into those discussions. We have also published an [insight](#) on how to identify pinch points in your supply chain and de-risk them.



## Scottish Deposit Return Scheme: Is August 2023 Implementation Likely?

With a planned launch date of 16 August 2023, the pressure is on for the Scottish government to deliver the deposit return scheme (DRS) for drinks containers. Despite increased scrutiny of industry readiness, Circularity Scotland (CSL) [reaffirmed](#) on 2 March that the scheme is on track and that producers responsible for more than 95% of containers sold in Scotland had registered with the scheme.

However, as the “go live” date moves closer, there are still challenges around how the DRS will operate in practice. For producers and retailers, which have new legal obligations under the scheme, this raises questions around how to ensure their compliance in time.

In parallel, the scheme continues to face scrutiny, both in the courts by way of [judicial review from small businesses](#) and, increasingly, from Scottish ministers voicing concerns about the DRS’s potential repercussions on trade. All three candidates for the Scottish National Party (SNP) leadership have said that they would [pause or change](#) the DRS, and the Westminster government is reportedly [planning](#) to deny the SNP’s request for a trade exemption under the UK Internal Market Act 2020, which could cause further disruptions. See our [blog](#) for further information on the DRS and the issues that businesses are facing in connection with the scheme.



## German Supply Chain Act on Corporate Diligence Obligations in Supply Chains Comes Into Effect

In the [March 2022 edition](#) of newsBITE, we reported on the European Commission proposal for a Sustainable Corporate Due Diligence Directive and in [June 2022](#), on the new German legislation requiring mandatory supply chain due diligence for human rights violations and environmental breaches.

The German legislation is now in effect as of 1 January 2023, and requires companies that have their central administration, their principal place of business, or any branch with more than 3,000 employees in Germany to implement specific risk management practices to detect and combat child labour, forced labour, poor environmental practices and other problematic issues. Our German supply chain team has published an update on our [supply chain law blog](#) as to what is required. To the extent that a German retail or catering business is in scope, this is likely to result in additional demands on food and drink suppliers to that business.



## Retained EU Law Bill: Health and Safety Coalition Calls on UK Government to Scrap Deadlines

A group of organisations has warned that implementing the Retained EU Law (Revocation and Reform) Bill 2022 (also known as the Brexit Freedoms Bill) could undermine health and safety standards and protections in the UK.

In their [joint statement](#), the groups highlight a lack of clarity as to which laws the EU Retained Law Bill covers and that more time and transparency are needed to review each law individually and consider why it was originally passed. The signatories are the Royal Society for the Prevention of Accidents (RoSPA), the British Occupational Hygiene Society, the British Safety Council, the British Safety Industry Federation, the Chartered Institute of Environmental Health, the International Institute of Safety & Risk Management (IIRSM) and the Institution of Occupational Safety and Health (IOSH).

We reported in our [December 2022 edition](#) of newsBITE on the introduction of the EU Retained Law Bill to Parliament. The Food Standards Agency (FSA) [Board Papers](#) published in November 2022 indicate that the FSA intends to preserve the vast majority of EU food law in the period up to December 2023, “to ensure that there are no gaps in the regulatory framework through the application of the sunset clause”. However, after that period and, in particular, during the following two and a half years (from January 2024 to June 2026), it is anticipated that there may be more material reform, particularly around streamlining processes for approving regulated products (which might include, for example, novel foods, additives, flavourings and genetically modified organisms (GMOs).

The EU Retained Law Bill could have major implications for UK businesses, and this joint statement is an example of organisations rallying to address the potential uncertainties.

## Use of the Term “Probiotic” to Describe Foods in France

In January, the International Probiotics Association Europe (IPA Europe) [reported](#) that the term “probiotic” can now be used in France under certain conditions. This is linked to [guidance](#) issued by the relevant authority in France, which includes, in published questions and answers related to health and nutrition claims, confirmation that the term “probiotic” is considered to be a non-specific health claim (and, therefore, only allowed if accompanied by a specific authorised health claim, such as “Live cultures in yoghurt or fermented milk improve lactose digestion of the product in individuals who have difficulty digesting lactose”), and that the term can be used as a category name for food supplements where the microorganisms used contribute to the balance of intestinal flora, as long as there is a sufficient amount of living cells and there are no other health claims related to probiotics, except for reference to the balance of intestinal flora.



## Proposal for UK Food Standards Agency to be Granted Additional Search and Seizure Powers for Assets Under the Proceeds of Crime Act 2002

A [consultation](#) has opened on the extension of investigatory powers under the Proceeds of Crime Act 2002 (POCA) to more public bodies. The consultation opened on 7 December 2022 and proposes that powers granted to certain bodies to recover the proceeds of crime under POCA should be extended to the FSA, the Environment Agency (EA), the Security Industry Authority, the Public Sector Fraud Authority and the Department for Work and Pensions. Proceeds of crime are defined as any money or assets gained via criminal activity, including breaches of regulatory requirements, including requirements under food laws, by corporate bodies such as limited companies. POCA allows for the recovery and confiscation of proceeds from such breaches (for example, there have been cases where planning authorities have sought confiscation orders against those who have committed planning offences).

The full consultation document notes that the FSA already undertakes financial investigations under POCA, which allows the FSA to conduct civil recovery and confiscation against food criminals, and that the National Food Crime Unit uses POCA powers in asset recovery matters and to support local authorities conducting investigations relating to food (reporting that, to date, the FSA has recovered £28,000). However, the FSA is seeking additional search and seizure powers (which are contained within s47 of POCA) to better enable the search for, and seizure of assets to satisfy confiscation orders. This suggests that POCA proceedings may be used more frequently in the future alongside prosecutions for breaches of food law.

The consultation closed on 1 March 2023 and publication of the response is awaited.

## Court in Germany Rules on Net Quantity in Multipacks of Candy or Confectionery

The Federal Administrative Court (*Bundesverwaltungsgericht*) issued a decision on 3 March that bags with individually wrapped candy or confectionery products need to indicate the total net quantity and the total number of individual packages. It found that Annex IX No.4 of EU Food Information Regulation 1169/2011 leaves no room for an exception for very small single pieces. If cookies are shrink wrapped, operators need to indicate the exact number in addition to the total net quantity. On the other hand, if the individual item is a unit of sale, manufacturers must indicate the quantity for each item and the total number. This may cause serious problems for food manufacturers where packaging machinery can weigh, but not count individual units.



## UK Health and Safety Fines: Machine Guarding and Vehicle Segregation Issues

There have been two hefty health and safety fines reported by the Health and Safety Executive (HSE) this quarter. In the first, a food company was fined £858,000 after an employee lost an arm. In the second, a wine company was fined £800,000 following the death of a visiting heavy goods vehicle (HGV) driver.

According to the December 2022 [HSE press release](#), an employee of a baking company had to have his arm surgically removed after it was pulled into an industrial food mixer. The company was fined £858,000 and ordered to pay £8,000 in costs after pleading guilty to breaches of Regulation 11(1)(b) of the Provision and Use of Work Equipment Regulations 1998. The HSE found the company's control measures were inadequate to prevent contact with the moving parts of the machine. Factors that contributed to these findings were that the guard on the mixer often was not replaced after cleaning and the interlocking system was defeated, allowing the mixer to operate without the front guard in position. There is specific [HSE guidance](#) on working with bakery products, although the most substantive content in that guidance relates to flour dust.

The second fine was [reported](#) by the HSE at the end of January. The victim had been waiting for his trailer to be loaded when he was struck by a forklift truck at the wine company's depot in Salford, causing serious head injuries. The HSE investigation found that the company had failings in a number of areas, including an out of date risk assessment that was not fit for purpose and an absence of segregation between pedestrians and vehicles in the loading area. The company pleaded guilty to breaching sections 2(1) and 3(1) of the Health and Safety at Work etc Act 1974 (HSWA) and subsequently was fined £800,000 and ordered to pay £5,614.30 in costs.

Both incidents are a reminder to food and drink businesses to ensure that they have up-to-date, thorough risk assessments to cover their activities, equipment and demised areas to ensure that control measures (including the provision of guarding on machines and work equipment) are adequate and to give clear information about site safety to employees and visitors.

These are both further examples of significant fines for health and safety breaches, particularly since the Health and Safety Sentencing Guidelines were introduced.

## UK Competition and Markets Authority (CMA) Announces Crackdown on Greenwashing in the Fast-moving Consumer Goods (FMCG) Sector and EU Publishes Draft Green Claims Directive

The CMA [announced](#) plans on 26 January 2023 to examine the accuracy of green claims made in the FMCG sector. This analysis will cover essential items that people use on a daily basis and buy frequently, including food and drink products, cleaning products, toiletries and personal care items. The CMA says it will analyse environmental claims made both online and in stores, targeting vague and broad eco-statements, for example, packaging or marketing a product as "sustainable" or "better for the environment" with no evidence.

This is a significant next step in the regulator addressing greenwashing claims in consumer goods. In response to a rise in claims about the environmental credentials of products and services, CMA published its Green Claims Code in September 2021. In January 2022, the CMA announced that the fashion industry would be one of the first investigated. As we reported in our [December edition](#) of newsBITE, within seven months of the CMA announcing its investigation into environmental claims in the fashion retail sector, it had opened an investigation into claims made by various fashion businesses. Therefore, it seems likely that there will be investigations into claims made by FMCG businesses, including claims on food and drink products.

Meanwhile, the EU has now [published](#) its draft "green claims" directive, a directive on the substantiation and communication of explicit environmental claims. Once finalised, EU directives set general principles that must be implemented by the national laws of all EU member states. The recitals to the draft legislation note that climate-related claims are particularly prone to being unclear and ambiguous and to misleading consumers, e.g. claims that products or companies are "climate neutral", "carbon neutral" or relating to carbon off-setting, or "net zero." It seems likely that such claims will come under particular scrutiny.

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## DEFRA Publishes UK Government Response to Consultation on Proposed Ban of Single-use Plastics, Including Food Containers – Ban Proposed From October 2023

The government has published a response to its [consultation](#) “Single-use plastic: banning the supply of commonly littered single-use plastic items” (and accompanying [press release](#)). Over 53,329 responses were submitted to the consultation, which ran from November 2021 to February 2022. Responses from members of the public and nongovernmental organisations demonstrated overwhelming support for the proposals, with 95% in favour of all the proposed bans. Responses from businesses were more varied, with approximately 20% opposing all bans on single-use plastic, while others supported a ban in principle, but highlighted issues for further consideration. Legislation will be introduced to ban the supply of the following single-use plastics in England from October 2023: plates, trays, bowls, cutlery, balloon sticks, and expanded and extruded polystyrene food and drinks containers (including cups). A draft [statutory instrument](#) has also been published. The government has also updated the [response](#) to its call for evidence on other sources of plastic pollution.



## European Chemicals Agency (ECHA) Publishes Proposed Restriction of “Forever Chemicals”

Authorities in Denmark, Germany, the Netherlands, Norway and Sweden submitted a proposal to restrict per-and polyfluoroalkyl chemicals (PFAS) to ECHA on 13 January 2023 (available on the [ECHA site](#)). PFAS is the name given to a group of waterproof, greaseproof and non-stick chemicals that are found in a broad range of consumer products, including some food packaging, which have been reported to persist for decades in the environment and in humans. The restriction proposal is extremely broad and focuses on the whole group of PFAS, aiming to reduce their emissions into the environment and make products and processes safer for consumers.

The first restriction is on the manufacture, use and placement on the market of PFAS as substances on their own, and the second is concentration limits for PFAS as a constituent in another substance, or contained in mixtures or articles. This proposal will be of interest to food businesses using PFAS in their supply chains and should be monitored, but the text will not necessarily become law as currently drafted. First, there will be a public consultation on the proposal between 22 March and 22 September 2023. The ECHA scientific committees will then consider input and publish their opinions on the proposed restriction in 2024. Any legislative proposal from the European Commission will consider the opinions of the ECHA scientific committees, and finally will need the approval of the European Parliament. Some groups, like the European Consumer Organisation (BEUC), have [welcomed](#) the proposed restriction.

## UK’s Genetic Technology Bill Presented to FSA Board Meeting

The FSA’s March board meeting included a presentation on the proposed Genetic Technology (Precision Breeding) Bill, which provides for gene-edited crops to be treated differently from genetically modified organisms (GMOs) in the UK. The board meeting [papers](#) on the bill, prepared for the purpose of board discussions on the provision of consumer information regarding precision bred food and to agree upon next steps and to update the board on various matters of note, include indicative time scales that suggest work will continue on proposals and scientific advice through 2023, with a view to final policy proposals in the last quarter of the year. Drafting and further consultation will then take place throughout 2024.

The papers also suggest that there is no current intention to introduce additional traceability requirements for relevant foods (e.g. requirements to mark such foods as containing precision-bred organisms (PBOs) or similar ingredients, recognising the potential for additional costs if specified information were required to accompany precision-bred food, to cater to the fact that it is not currently possible to identify such food by testing because of its similarities to non-precision-bred food. The board paper notes that costs to industry and to local authorities would likely arise, including for business, costs associated with segregation from non-precision-bred food or feed, and for local authorities, due to enforcement requirements.

The [bill](#) is currently proceeding through Parliament, with the latest amendments having been made by the House of Lords in early February.

## EU Agrees to 10th Package of Sanctions Against Russia

On 25 February 2023, the EU Council adopted the 10th package of restrictive measures in response to Russia's ongoing aggression against Ukraine. The new regulations include tighter restrictions on the export of dual-use goods, as well as measures against entities that support the conflict or deliver drones to be used by Russia. According to a statement by the European Commission, the new restrictions apply to exports to the EU totalling approximately €11.4 billion. Through this package, almost half of the EU exports to Russia are restricted. We have published an [insight](#) with a brief summary of the package, focusing mainly on individual sanctions (targeting natural persons and entities), as well as import and export controls.

Meanwhile, the UK's office of national statistics (ONS) has released the [latest statistics](#) on the impact of sanctions on trade with Russia, reporting that even those food and drink products that are exempt from export bans (because they are categorised as being for the benefit of the civilian population) are at low levels of trade in value terms.



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