



Legal NewsBITE: Food and Drink Quarterly

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European Commission Guidance on Application of EU Food Law After Brexit: Implications for UK Food Businesses

The New Commission Guidance raises a number of potential issues on Brexit for food labelling, including origin information requirements regarding marking food as EU or non-EU (for example, labelling honey as a “blend of EU honeys” or a “blend of non-EU honeys”); mandatory labelling requirements to identify the importer into the EU (from the UK); and mandatory health or identification marks on products of animal origin (these marks will no longer include the “EC” abbreviation currently used when it is applied in a slaughterhouse within the EC).

In addition, the commission must list the UK as an approved third country for the export of each category of food of animal origin to allow such food to be imported into the EU from the UK, and UK-originating organic foods will be subject to the same regulation as organic foods entering the EU from other third countries – certificates for organic foods issued by control authorities/bodies in the UK may no longer be valid.

These consequences may not arise in practice (as they could be provided for as part of transitional arrangements in a withdrawal agreement between the EU and the UK), but UK food producers and packaging/labelling companies should start to consider and plan now for the possibility that amended labels and new certifications may be required.

European Court of Justice (ECJ) Approves “Champagne Sorbet”

The ECJ has ruled that a product containing real Champagne may use this protected denomination, rejecting the French Association of Champagne Producers’ opinion that this was an undue allusion to the reputation (Judgment of 20 December 2017, Case C-393/16). Since the EU established its rather rigid system to protect designated indications of geographic origin, hundreds of producer associations, led by Italy and France, have taken advantage of a registration of their products. Products that do not comply with a specification and do not originate from the defined region may not use the protected designation of origin (PDO). Further, any such PDO is protected against any misuse, imitation or evocation even if the true origin is indicated. The ECJ has been rather supportive of a strict approach, allowing, amongst others, Calvados to get rid of the Finnish “Verlados”.

One of the most successful protectors, the French Association of Champagne Producers, tried to take it even further, seeking a ruling that even products containing real Champagne may not refer to the name. When the German discounter Aldi distributed a Champagne sorbet containing 12% Champagne, the Comité Champagne claimed that the use of the protected name on a non-wine product may dilute its reputation. The ECJ found that Aldi was indeed taking advantage of the undisputed reputation but did not find this advantage to be undue. Since one of the essential characteristics of the product was a taste attributable primarily to Champagne, the use of the name does not amount to a misuse, imitation or evocation. It is foreseeable that a new line of battle will be established around the question, “How much of the real thing is enough?”

Continued Focus on Meat Processing: Importance of Demonstrating Compliance and Supply Chain Mapping

In our [December 2017](#) edition of NewsBITE, we reported on the recent Parliamentary Inquiry and its wider ramifications for food business operators. Over the last few weeks, [trade press reports](#) have suggested that the Food Standards Agency (FSA) and Food Standards Scotland will review meat cutting plants and cold stores following two incidents of “serious non-compliance”.

Further [press coverage](#) has reported that trade customers have disposed of a significant quantity of products after an alternative supplier conducted a voluntary recall over labelling concerns. One of the meat suppliers involved has now [reportedly](#) gone into administration. There has been a focus on the corporate customers of these businesses, as well as the businesses themselves, highlighting the potential importance to brand reputation of supply chain provenance and due diligence, as well as making sure that food safety requirements, including requirements for date labelling, are demonstrably complied with.

This story is not going to go away it seems, with the [press](#) now focusing on the number of hygiene breaches detected by the FSA during inspections. Supply chain mapping to ensure that you have more than one alternative source of supply can be an invaluable safeguard when a key supplier (or suppliers) or key products are under scrutiny.

Report on Food Fraud Conference March 2018

We attended the [Food Fraud Conference 2018](#), run by *New Food* magazine. Current areas of concern flagged by Professor Chris Elliott include garlic; herbs and spices; rice; shrimps; and the organic sector, which is very vulnerable. Food Standards Scotland highlighted as priority areas: eggs; fish; herbs and spices; red meat; and wild shellfish. The benefits of a global alliance and approach were underlined and another key theme was the potential application of new technology in combatting food fraud (including blockchain and fingerprint-smartphone technology). The audit burden on food businesses was highlighted a number of times during the day, but no clear alternative was proposed.

General Data Protection Regulation for the Food Sector: Deadline 25 May 2018

In May last year, we published a “one-year” [countdown guide](#) for employers on being ready for GDPR. The deadline is now fast approaching. The new EU General Data Protection Regulation (GDPR) will have direct effect throughout the EU from 25 May 2018 and is expected to continue to apply in the UK post-Brexit. The scale of the changes imposed is significant, and organisations need to take steps to ensure compliance and to avoid regulatory action, which could, in extreme circumstances, include multimillion-pound fines. The issues faced by the food and drink sector are likely to be similar to those faced by other businesses. This will include the need to audit existing data processing activities (including the handling of data relating to employees, consumer customers and contacts at ingredient and/or equipment suppliers) and potentially change privacy notices, contract terms, policies, processes and systems to comply with the new rules. For further details, see the [guidance](#) produced by the UK Information Commissioner’s Office.

Recently Completed Food and Beverage Sector Deals and Deal Trends

Over recent months, we have advised on a range of food and beverage sector deals, including:

- **Brenntag UK Holding Limited** – We advised on the acquisition of Kluman & Balter and A1 Cake Mixes.
- **Molson Coors Brewing Company (UK) Limited** – Advising on the acquisition of Aspoll Holdings from the Chevallier Guild family and other shareholders.
- **Cott Corporation** – Advised on the US\$1.25 billion sale of its traditional beverages business to Netherlands-based Refresco.

We commented on trends in the food and beverage sector deals in our [March 2017 edition](#) of NewsBITE and these trends seem to be continuing. We have also seen acquisitions of food and beverage sector businesses by buyers who are not currently within the food and beverage industry. In particular, we are continuing to see a number of transactions reported in the “healthy food” sector, including the acquisition of Whole Foods by Amazon, the acquisition of Sweet Earth by Nestlé and the acquisition of Pukka by Unilever. We expect to see healthy brands grow over 2018 with investment for start-up or expanding businesses and acquisitions across this sector. It will be interesting to see whether any legislative changes implemented over 2018 impact the deal sector, with hot topics such as addressing single-use plastics, the meat tax and Brexit on the radar.

EU Regulations Coming Into Force – Novel Foods (Insects for Dessert, Anyone?) and Acrylamide Regulation

We reported on the Novel Food Regulation in our [June 2017 edition](#) of NewsBITE and it is now in force. The new regulation makes it easier to market traditional third-country foods like edible insects and other such tasty treats. Our team in Frankfurt is experienced in dealing with applications to the European Commission for authorisation of novel foods.

A reminder, too, that food business operators producing foods/placing foods on the market that may contain acrylamide (a chemical created when some foods are cooked for long periods at high temperatures) will need to comply with a new [EU Regulation](#) from April, to mitigate acrylamide formation. This will affect those producing/supplying bread, bakery products (such as biscuits and wafers), crackers, coffee, baby food, French fries, other cut (fried) products, crisps and potato dough snacks. Operators will be required to put practical steps in place to manage acrylamide within their food safety management systems. There is a [toolkit](#) available from FoodDrinkEurope, and the FSA is producing guidance, but this has not yet been published.

EU regulations are directly applicable in all member states, including the UK.

Recent and Upcoming Food and Drink Sector Events

We were pleased to participate in the Food and Drink Federation’s (FDF) [Cyber Security Conference](#), with Fiona Campbell presenting on legal responsibilities in relation to your data and how you can keep it safe. Rob Elvin is also presenting to FDF members in April at a [breakfast briefing](#) on the Sentencing Guidelines and recent sentencing decisions. Recent decisions suggest significantly higher penalties than those typically imposed before the guidelines were introduced and the overall approach to risk management by operators and senior management is increasingly important. We are now publishing a monthly newsletter on legal and procedural developments in environment, safety and health laws, [frESH Law Horizons](#). Please contact [Nicola Smith](#) if you would like to be added to the distribution list for future editions.

In addition to these UK-led events, we hosted a dinner debate at the Cercle Royal in Brussels in February, together with the Irish Cattle & Sheep Farmers’ Association (ICSA) and Ethanol Europe Renewables Ltd (EERL), with discussions on “The Future of the Agri-Food Industry Post-Brexit”. Ambassador Rory Montgomery was a keynote speaker, alongside Tony Connelly (Europe Editor for RTÉ News and Current Affairs and author of *Brexit and Ireland: The Dangers, the Opportunities, and the Inside Story of the Irish Response*) and Mella Frewen, Director General of FoodDrinkEurope.

Reducing Food Waste: A Core Part of the Government’s 25-year Plan and Clean Growth Strategy

The government has issued a raft of environmental policy statements in the last few months. The Clean Growth Strategy set out a commitment to see no food waste entering landfills by 2030, and the 25-year plan includes a target of “zero avoidable waste by 2050”. Major parts of the 2050 commitment are voluntary initiatives relating to food waste, like the [Courtauld Commitment](#) and WRAP’s new [guidance](#) on food labelling to avoid food waste. DEFRA has also announced that it will issue a detailed Resources and Waste Strategy later in 2018. This strategy is expected to place strong emphasis on maximising the value from resources and minimising the impacts of end of life disposal. However, the Climate Change Committee’s recent review of the [Clean Growth Strategy](#) said that the food waste landfill ban needs to be implemented by 2025, five years earlier than currently planned, and called for this to be included in the Resources and Waste Strategy.

Plastic waste is also inherently connected to the food supply chain, and these policy documents include ambitious targets to eliminate “avoidable” plastic waste by 2042, including extended producer responsibility and tackling single-use plastics. In light of the recent China waste ban (the UK has shipped over 2.7 million tonnes of plastic waste to China since 2012), which some commentators say is a bigger threat to the UK’s waste industry than Brexit, the UK will certainly need to up its game in terms of its domestic recycling capabilities and technology to meet these targets. In light of these emerging targets and policies, a number of the major supermarkets have launched their own pledges on eliminating food waste and reducing plastic packaging. We will monitor the development of these voluntary measures and the government’s policy and report further on key initiatives and requirements.

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