



## Consumer Products & Retail Regulatory Outlook

Deloitte Centre for Corporate Regulatory Insight | February 2018

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# Introduction

## Regulatory changes with lasting effect

In recent years, legislation reforms in the EU and UK have centred around protecting the environment, consumers and employees while encouraging innovation in products and services.

Our research highlighted this trend to continue in 2018 with significant regulatory changes across three main themes:

- The good corporate citizen
- Consumer protection
- Product safety

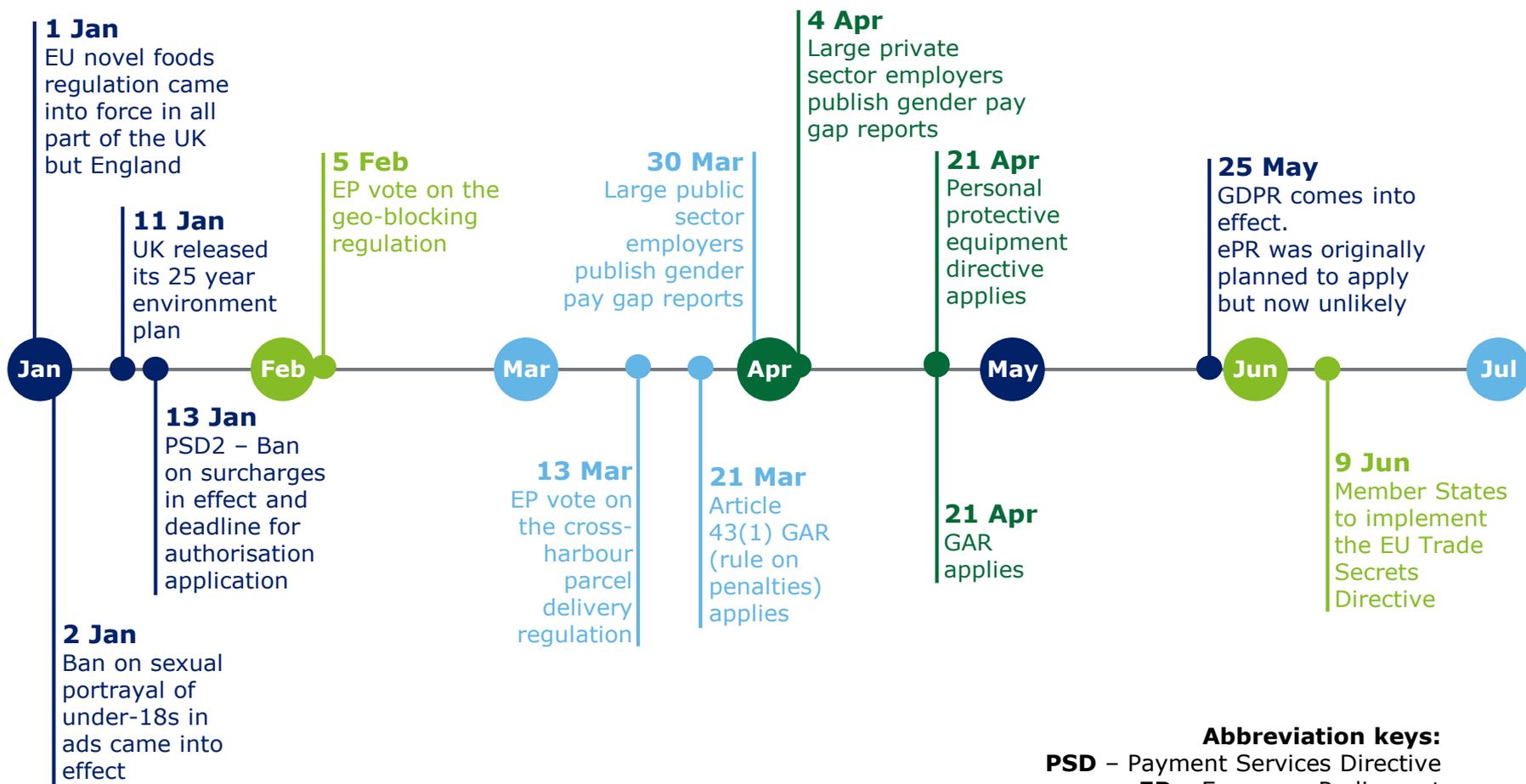
Additionally, General Data Protection Regulation and the e-Privacy Regulation will have direct and major impacts on the way companies carry out marketing activities.

This document identifies key upcoming regulations but is not all inclusive.



# Timeline

## Key dates for your diary



### Abbreviation keys:

- PSD** – Payment Services Directive
- EP** – European Parliament
- GAR** – Gas Appliance Regulation
- GDPR** – General Data Protection Regulation
- ePR** – e-Privacy Regulation

# The Good Corporate Citizen

## Under the public gaze

Regulation	Key provisions	Potential impacts	Key dates
Modern slavery statement	<ul style="list-style-type: none"> <li>In Oct 2017, Home Office latest guidance included the following changes:               <ul style="list-style-type: none"> <li>➤ <b>encouraged smaller organisations to comply</b> with the reporting obligations, e.g. when bidding for contracts with larger organisations;</li> <li>➤ used <b>stronger language</b> in outlining the its expectations on modern slavery statements; and</li> <li>➤ Included a <b>child labour definition</b>.</li> </ul> </li> <li>In the EU, a ban on import of goods produced using modern forms of slavery and forced labour, including that of children, is being considered.</li> </ul>	<ul style="list-style-type: none"> <li>Recent public scrutiny and case law around the world highlight the importance of examining the supply chain which is often complex and opaque, especially in the retail sector.</li> </ul>	<ul style="list-style-type: none"> <li>Publication as soon as reasonably practicable after financial year end</li> </ul>
Gender pay gap reporting	<ul style="list-style-type: none"> <li>Affected employers must publish an <b>annual report</b>, starting from this year, to outline the current state of their gender pay gaps and can provide a narrative explanation for any disparities.</li> <li>For the non-public sector, "employer" is not defined but the regulation clearly suggests it would include companies, LLPs, partnerships, limited partnerships, unincorporated bodies or any other type of employing entities.</li> <li>Employers might adopt (voluntarily) the "Think, Act, Report" framework to address the gender pay gap</li> </ul>	<ul style="list-style-type: none"> <li>The report is mandatory for large (&gt;250 employees) public sector, private and voluntary sector employers.</li> <li>Employers should consider an action plan to narrow the gender pay gap and assign appropriate personnel to oversee and monitor progress.</li> </ul>	<ul style="list-style-type: none"> <li><b>30 Mar:</b> reports due for large public sector employers.</li> <li><b>4 Apr:</b> reports due for large private and voluntary sector employers.</li> </ul>

# The Good Corporate Citizen

## Under the public gaze

Regulation	Key provisions	Potential impacts	Key dates
Waste management	<p><b>EU:</b></p> <ul style="list-style-type: none"><li>The <b>EU Circular Economy Package</b> includes revised proposals on waste and packaging which set clear targets to reduce waste and establish a long term path for waste management and recycling.</li><li>Amendments to the Restrictions on Hazardous Substances Directive (<b>RoHS2</b>) relating to (EEE), aim to enable the secondary market operations (reselling, second hand market) and repair of certain electrical and electronic equipment (EEE) that would otherwise be prohibited from 22<sup>nd</sup> July 2019 . The objective is to enhance the possibility and economic profitability of recycling waste of EEE, prevent waste and additional savings of energy and raw materials.</li></ul> <p><b>UK:</b></p> <ul style="list-style-type: none"><li>The <b>UK Producer Responsibility Obligations Regulation (PRO)</b> has been updated in December 2017 with new targets for waste recycling targets and new overall packaging waste recovery and recycling targets for 2018-2020. Further reform of the PRO, especially on the <b>Package Recovery Note (PRN) system</b>, is expected to place more financial responsibility on producers for the kind of packaging they place on the market.</li><li>In October 2017, the UK government consulted on extending the scope of the regime for the Waste Electrical and Electronic Equipment (WEEE) to cover all EEE rather than the current 10 categories.</li></ul>	<ul style="list-style-type: none"><li>The UK is likely to adopt elements of the Package despite Brexit. However, it is unclear if the amended RoHS2 will be transposed into UK law.</li><li>Increased public scrutiny will force companies to act to reduce their waste and increase recyclability, such as the recent cases of coffee cups and plastic bottles.</li></ul>	<ul style="list-style-type: none"><li><b>11 Dec 17:</b> amended RoHS2 directive came into force.</li><li><b>12 Jun 19:</b> amended RoHS2 to be imposed into MS law.</li><li><b>11 Jan:</b> UK 25 year environment plan released.</li><li><b>15 Aug:</b> UK government intends to introduce the wider “open scope” requirements for WEEE.</li></ul>

# Consumer Protection

## Focal point in the digital era

Regulation	Key provisions	Potential impacts	Key dates
EU consumer protection directives	<ul style="list-style-type: none"> <li>• 2 Directives were proposed on contracts for the sale of goods - digital (both digital content and digital services) and physical (online and offline, including face-to-face sales), to <b>achieve full harmonisation on consumer rights</b>.</li> <li>• <b>Key discrepancies with the UK Consumer Rights Act 2015:</b> <ul style="list-style-type: none"> <li>➤ no short term right to reject;</li> <li>➤ no claim for refund or reduction after a single repair attempt;</li> <li>➤ emerging defect presumed to have been present on delivery for up to two years (rather than six months under the CRA);</li> <li>➤ remedy for defects discovered within two years (whereas it is five years in Scotland and six in the rest of the UK);</li> <li>➤ consumers need to expressly accept known defects (under the CRA, they have to be obvious or drawn to the consumer's attention);</li> <li>➤ a statutory right to withhold payment of outstanding amounts until defects are fixed (not present in the CRA);</li> <li>➤ less scope for deduction from refund payable to the consumer on rejection of goods.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Member States have 2 years to implement into national legislation on adoption. Therefore, the UK will not have to transpose into UK law.</li> <li>• Discrepancies between the UK and EU legislations may result in extra compliance costs for companies operating in both jurisdictions.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>TBD:</b> Directives to be finalised and adopted.</li> </ul>
Payment Services Directive 2 (PSD2) – UK Payment Services Regulations (PSR) 2017	<ul style="list-style-type: none"> <li>• <b>New rules on charging customers fees for the use of payment methods</b>, including a ban on surcharges for consumers using debit / credit card and excessive charges on business to business transactions.</li> <li>• <b>Narrower limited network exclusion (LNE)</b>: applies to services based on specific payment instruments that can be used only in a limited way to acquire goods or services only in the issuer's premises or within a limited network of service providers or to acquire a very limited range of good or services. Examples include staff catering cards, tour operator cards or prepaid store cards.</li> <li>• <b>Narrower restriction for the commercial agent exclusion (CAE)</b> also brings a lot marketplaces such as Uber, Airbnb or Deliveroo into scope.</li> </ul>	<ul style="list-style-type: none"> <li>• Previous surcharges need to be removed from future relevant payment transactions.</li> <li>• Many companies intending to use the LNE need to notify the FCA.</li> <li>• Marketplaces no longer excluded need to either apply for a licence or partner with an authorised payment service provider.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>13 Jan:</b> PSD2/ PSR 2017 came into force.</li> </ul>

# Consumer Protection

## Focal point in the digital era

Regulation	Key provisions	Potential impacts	Key dates
Geo-blocking Regulation	<ul style="list-style-type: none"> <li>Aims to <b>remove discrimination</b> based on customers' nationality, place of residence and place of establishment to ensure:               <ul style="list-style-type: none"> <li>➤ <b>Equal access</b> (including price) to goods either delivered in a Member State or collected by customers and services such as cloud, data warehousing, website hosting and hotel accommodation or car rental;</li> <li>➤ <b>Same payment conditions</b> on any payment methods;</li> <li>➤ <b>Access to the same e-commerce website</b> (no blocking or redirecting); and</li> <li>➤ <b>Remove restrictions on passive sales.</b></li> </ul> </li> <li>Exclusions:               <ul style="list-style-type: none"> <li>➤ Services linked to copyright-protected content or works in an intangible form (e.g. music streaming, ebooks) – subject to a review by the European Commission; and</li> <li>➤ Services such as financial, audio-visual, transport, healthcare and social services.</li> </ul> </li> <li><b>Price differentiation will not be prohibited</b>, i.e. traders can offer different general conditions, including prices, and target certain groups of customers in specific locations.</li> <li><b>Review clause:</b> an impact evaluation will be carried out 2 years after its coming into force, including a possible further application to certain electronically supplied services which offer copyrighted content.</li> </ul>	<ul style="list-style-type: none"> <li>Applicable 9 months after publication in the EU Official Journal so it may land close to the Brexit date, on either side.</li> <li>As a result of Brexit, UK will become a third party country and hence its traders will not be subjected to the regulation.</li> </ul>	<ul style="list-style-type: none"> <li><b>5 Feb:</b> European Parliament voted – awaiting approval from the Council.</li> <li><b>Xmas 2018:</b> regulation expected to come into force by then.</li> </ul>
Cross-border Parcel Delivery Regulation	<ul style="list-style-type: none"> <li>Aims to <b>increase regulatory oversight and price transparency</b> for cross-border parcel delivery services, bring down prices and improve competition in the market.</li> <li>Allows users to <b>easily compare domestic and cross-border tariffs.</b></li> <li>National authorities will assess universal service tariffs and the impacts on the individual and SME users, disabled persons and people living in remote areas.</li> </ul>	<ul style="list-style-type: none"> <li>Parcel delivery providers with &gt;50 employees will have to disclose prices and clear customer complaint procedures.</li> <li>Additional reporting requirement on operations.</li> </ul>	<ul style="list-style-type: none"> <li><b>13 Mar:</b> European Parliament to vote.</li> </ul>

# Product Safety

## Product innovation under spotlight

Regulation	Key provisions	Potential impacts	Key dates
Novel Foods Regulation	<ul style="list-style-type: none"><li>Amends the <b>rules for the placing of novel foods on the market</b> within the Union and reviews, clarifies and updates the categories of food which constitute novel foods.</li><li>The regulation has come into force on 1<sup>st</sup> Jan in all parts of the UK but England (where it comes into force on 8<sup>th</sup> March).</li></ul>	<ul style="list-style-type: none"><li>Suppliers to verify whether products fall within the scope of the regulation.</li></ul>	<ul style="list-style-type: none"><li><b>1 Jan:</b> regulation applied.</li></ul>
Organic production and products labelling of organic products	<ul style="list-style-type: none"><li><b>Strengthens rules</b> on the control system, trade regime, animal welfare practices and non-authorized products or substances to <b>improve consumer confidence</b>.</li><li>Harmonises and <b>simplifies production rules</b>, including removing some past exceptions and derogations.</li><li><b>Enlarges the scope of organic rules</b> to a wider list of products and additional production rules.</li></ul>	<ul style="list-style-type: none"><li>UK will become a third country after Brexit but compliance would be required to export to the EU market.</li></ul>	<ul style="list-style-type: none"><li><b>Early 2018:</b> awaiting approval by European Council.</li><li><b>1 Jan 21:</b> regulation enters into force.</li></ul>
Revised Spirit Drinks Regulation	<ul style="list-style-type: none"><li>Aims to replace Regulation (EC) No 110/2008 – the Spirit Drinks Regulation – to <b>update procedures for the management of geographical indications (GIs)</b>, improve areas related to the labelling of compound terms, allusions and mixture as well as the optional labelling for the origin of raw materials.</li><li>GIs registration procedures are also reviewed and a <b>publicly accessible updated electronic register of recognised GIs</b> of spirit drinks will be established and maintained.</li></ul>	<ul style="list-style-type: none"><li>Spirit drinks, produced before the application date and met the requirements of the current regulation, may continue to be placed on the market until stocks are exhausted.</li></ul>	<ul style="list-style-type: none"><li>Text still under negotiation at EU level.</li></ul>
Personal protective equipment (PPE)	<ul style="list-style-type: none"><li>Regulation to <b>repeal the PPE directive</b> which applies to devices or appliances designed to protect workers against one or more health &amp; safety hazards.</li><li><b>Key changes</b> include: introduction of a 5 year validity period on EU Type Examination Certificates and classification of PPE with a risk-based approach.</li></ul>	<ul style="list-style-type: none"><li>Brexit will have an impact on UK Notified Bodies and UK manufacturers but the exact effect is not yet to be confirmed.</li></ul>	<ul style="list-style-type: none"><li><b>21 Apr:</b> regulation applies.</li></ul>

# Product Safety

## Product innovation under spotlight

Regulation	Key provisions	Potential impacts	Key dates
Gas Appliance Regulation (GAR)	<p>Replaces the Gas Appliances Directive to ensure that appliances on the market burning gaseous fuels meet a high level of protection for the health and safety of users, protection of domestic animals or property and rational use of energy:</p> <ul style="list-style-type: none"> <li>• <b>Broader scope</b> to cover alternative fuel sources, cooking implements, air conditioning and entire laundry process;</li> <li>• <b>Clearer definitions</b> for manufacturers, importers and distributors;</li> <li>• <b>Additional responsibilities for manufacturers:</b> risk assessment, risk reduction techniques and unintended use of the product must be considered;</li> <li>• <b>Additional responsibilities for importers:</b> extra documentation (declaration of conformity, type examination certificate, EC surveillance certificate); sample product testing, appropriate instructions and considerations for effects on products due to storage and transport.</li> </ul>	<ul style="list-style-type: none"> <li>• Products already in the supply chain or on the market before 21 April are not affected.</li> <li>• UK exporters will need to appoint a representative in the EU after Brexit, unless the UK Notified Bodies continue to be recognised.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>21 Mar:</b> Article 43(1) applies.</li> <li>• <b>21 Apr:</b> the rest of the Regulation applies.</li> </ul>
Compliance and Enforcement Regulation	<ul style="list-style-type: none"> <li>• Aims to <b>enable better cooperation among national market surveillance authorities for non-food products</b> which are subject to Union harmonising acts.</li> <li>• <b>Key provisions</b> for business: <ul style="list-style-type: none"> <li>➢ Manufacturers to designate a person responsible for compliance information established within the Union;</li> <li>➢ Market surveillance authorities to have power to access data and documents, carry out onsite inspections, make test purchases and carry out mystery shopping, withdraw products and destroy them, impose penalties and order the recovery of profits;</li> <li>➢ Customs controls on products entering the Union market to be strengthened.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• It may be unlikely that the regulation will be in force before Brexit so the UK does not have to transpose into law.</li> <li>• Upon Brexit, UK manufacturers exporting goods to the Union will need to appoint a designated person established within the Union.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>19 Dec 17:</b> proposal first published by the European Commission.</li> </ul>

# Product Safety

## Product innovation under spotlight

Regulation	Key provisions	Potential impacts	Key dates
UK Code of practice on corrective actions and product recalls	<ul style="list-style-type: none"><li>• A <b>Publicly Available Specification (PAS)</b> on corrective action and recalls was put out for public consultation in Sep 2017.</li><li>• The PAS has 2 parts:<ul style="list-style-type: none"><li>➢ Part 1 sets out a <b>code of good practice</b> for businesses to ensure effective monitoring, assessment, notification and correction of unsafe products, including through their recall where appropriate.</li><li>➢ Part 2 provides <b>guidance to regulators</b> as to how best to advise businesses in the preparation of corrective action programmes, monitoring incidents and determining and implementing appropriate corrective action programmes.</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Businesses need to have a plan in place for corrective actions and product recalls so they are prepared if actions required.</li></ul>	<ul style="list-style-type: none"><li>• <b>16 Jan:</b> government response to the Working Group report confirmed the PAS would be available early 2018.</li></ul>

# Marketing and Advertising

## Data at the heart of the business

Regulation	Key provisions	Potential impacts	Key dates
EU e-Privacy regulations (ePR)	<p>Aims to align with GDPR but focuses on e-privacy, cookies and direct marketing. Draft text includes:</p> <ul style="list-style-type: none"> <li>• <b>Browser settings</b> to replace cookie banners: browser providers such as IE, Chrome, Firefox etc. will provide options for users to allow / disable cookies by functions.</li> <li>• <b>Maximum fine of 4% of global turnover</b> as per GDPR for offences.</li> <li>• <b>Wider scope</b> to go beyond traditional telecom operators but also providers of electronic communications services such as OTT providers (WhatsApp, Skype, Viber, etc.).</li> <li>• <b>Metadata</b>: same rules apply to both content and metadata communications (e.g. numbers called, websites visited, geographical location or time/date a call was made, etc.)</li> <li>• <b>Direct marketing</b>: still not confirmed and likely to be amended. Main principle is that such communications are allowed only under user consent but may allow for "soft opt-in" for existing customers on similar products and services. Likely to affect B2B marketing.</li> <li>• <b>Use of 3<sup>rd</sup> party analytic cookies</b> (e.g. Google Analytics) will require consent but exemption applied to 1<sup>st</sup> party analytic cookies.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Browser settings</b> for cookie consent may lead to mass removal of consent, resulting in many sites becoming inaccessible to users.</li> <li>• <b>Major changes expected in direct marketing</b> business and how consent will be obtained to ensure compliance.</li> <li>• <b>Retrospective consent</b> may be required for existing users.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>25 May</b>: planned date for the new ePR to be implemented together with GDPR.</li> <li>• However, this is not likely as the final text is still being negotiated.</li> </ul>
Ban on sexual portrayal of under-18s in ads	<ul style="list-style-type: none"> <li>• Rules introduced by CAP and BCAP to prohibit any sexualised depiction of under-18s (previously under-16s in BCAP and not present in CAP), unless the principal function of the ad is to promote the welfare of under-18s or to prevent harm.</li> </ul>	<ul style="list-style-type: none"> <li>• ASA will use the rules to uphold complaints on this issue.</li> <li>• Public scrutiny on these issues may result in controversial ad campaigns to be pulled, costing money and damaging reputation.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>2 Jan</b>: the ban is in effect.</li> </ul>
Rule on gender stereotypes in ads	<ul style="list-style-type: none"> <li>• ASA and CAP are developing new rule and guidance on the depiction of gender stereotypes in ads, without banning all forms of gender stereotypes.</li> </ul>		<ul style="list-style-type: none"> <li>• <b>Spring 2018</b>: consultation on the rule.</li> </ul>

# Other Matters

## Brand protection

Regulation	Key provisions	Potential impacts	Key dates
Distribution of luxury products	<ul style="list-style-type: none"><li>In <i>Coty Germany GmbH v Parfümerie Akzente GmbH</i>, the European Court of Justice ruled that manufacturers of luxury products may, in some circumstances, ban their distributors from using 3<sup>rd</sup> party online platforms, such as Amazon, to preserve the luxury image of their products.</li></ul>	<ul style="list-style-type: none"><li>Brand owners need to understand what may qualify as a luxury product and the basis for the ruling to gauge whether it may apply to them, as national courts may differ in their interpretation.</li></ul>	<ul style="list-style-type: none"><li><b>6 Dec 17:</b> ECJ decision announced.</li></ul>
EU Trade Secrets Directive	<ul style="list-style-type: none"><li>Obliges Member States (MS) to protect trade secrets against unlawful acquisition, use and disclosure.</li><li>Also allows MS to provide for farther reaching enforcement remedies subject to the respect of the rules that protect third party rights.</li><li>While the substance of the proposal is broadly in line with UK law, it is possible that the provisions could strengthen the position of rights-holders against the importation of infringing products that have been manufactured outside the EU.</li></ul>	<ul style="list-style-type: none"><li>It is unclear whether the directive will be formally implemented in the UK due to Brexit.</li></ul>	<ul style="list-style-type: none"><li><b>9 Jun:</b> Member States to implement the directive.</li></ul>



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