



September 2021



# Material issues

Big Food and the rise  
of plastic-related risk

**Investor brief**  
Executive summary

**ClientEarth**

# ClientEarth

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# Executive summary

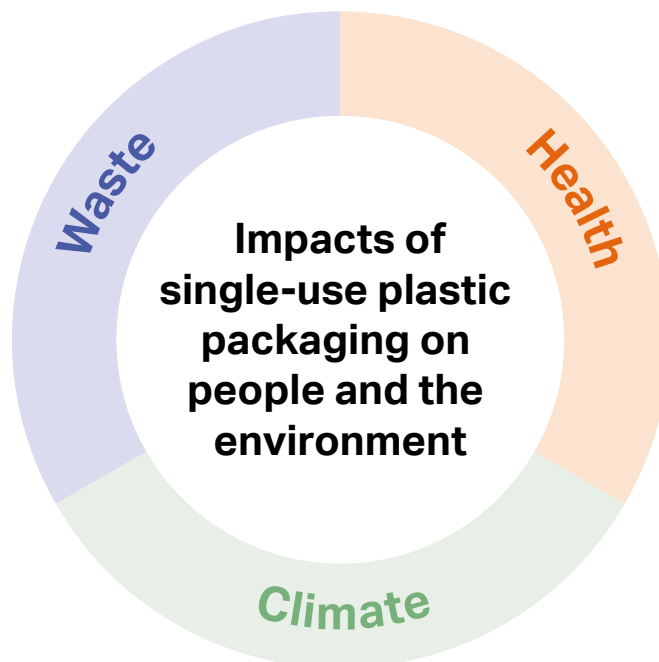
The plastics problem has reached crisis point. The powerful imagery of marine wildlife entangled in plastic waste that shocked the world is just the tip of the iceberg. Microplastics have been found deep in the oceans, in Arctic snow and Antarctic ice, in shellfish, salt and beer. Awareness is building on the significant climate cost of plastics. Research on the potential health hazards lurking in everyday packaging is accumulating.

Increasingly, citizens, scientists and policy makers are in agreement: the planet cannot handle any more plastic.

Plastic packaging has become a public enemy – and the packaged food and drink sector is in the spotlight. Blue chip food manufacturers and grocery retailers (or ‘Big Food’ as we term them in this briefing) face snowballing plastic-related risk. Policymakers are taking action at unprecedented speed, responding to widespread outrage from citizens around the world. The first wave of legal cases on plastic pollution have now been launched.

Despite legal obligations to disclose material risks to investors and other stakeholders – and in the face of warnings from market specialists, rating agencies, investors and financial institutions reinforcing the materiality of plastic-related risk - many names in Big Food are not reporting information about these risks to stakeholders. These failures could lead to legal action. Big Food is also not doing enough to mitigate these risks by addressing their addiction to single-use plastics, with many treating the issue as a PR problem rather than a serious source of risk to their business.

In this briefing, we take a deep dive into the relevant trends, policies and patterns coming out of Europe on three key aspects of the plastics crisis – waste, climate and health – analysing in turn the regulatory, reputational and liability risks of each one.



Headline points include:

### Regulatory risk

A wave of new legislation has been introduced targeting plastic packaging waste through bans, restrictions and additional costs on corporate packaging-users. Member States are facing tougher targets for plastic recycling and decreasing plastic waste sent to landfill, along with a plastic levy on unrecycled plastic waste – all of which is set to feed into more restrictions and higher costs for companies.

The waste trade – which has long underpinned waste management in the Global North – is in troubled waters. More and more importers are closing their borders to plastic waste, citing the toll on the local environment and public health. Dealing with increasing volumes of plastic waste at home will add incentive to waste exporting governments to cut down on plastic waste at source and/or pass on higher waste disposal costs to companies contributing to the problem.

The vast majority of plastic packaging is made from oil and gas, in energy intensive processes. From cradle to grave, plastics emit greenhouse gases. Policymakers are increasingly viewing the transition to a circular economy and mitigating climate change as twin agendas: the carbon intensity of throwaway plastics is coming more into focus, and likely to lead to even stricter measures targeted at reducing them in the future.

The ever more urgent need to achieve emissions reductions spells trouble for plastic producers, with knock-on effects for Big Food. The phase-out of favourable regulatory conditions shielding plastic producers in the EU from the carbon price, along with uncertain market dynamics for fossil fuels (the feedstock for almost all plastics) could lead to an increase in costs for prolific users of single-use packaging.

Laws designed to protect consumers from hazardous chemicals are set to get tougher on food and drink packaging, with lobbyists in the packaging industry balking at commitments by the European Commission. This will cause disruption to packaging choices and processes for Big Food, likely leading to increased cost (compliance costs and/or packaging prices).

### Reputational risk

The plastics backlash has mobilised at an unprecedented rate, with Big Food the most exposed to public criticism of all companies on the plastic supply chain. Risks of reputational harm are exacerbated by shifts in purchasing power to millennials, a generation that prioritises sustainability.

Plastic production is receiving increased attention from climate activists as the next frontier of fossil fuel infrastructure, spreading the message about the climate costs of plastics.

Public awareness of the potentially hazardous substances lurking in plastic packaging is high, and concern is escalating about the as-yet-unknown effects of microplastics in the human body, adding another reason for consumers to turn their backs on plastic packaging.



## Legal risks

A first-of-its-kind legal case seeking to hold major food manufacturing companies responsible for marine plastic pollution has launched in the US, along with a number of cases relating to companies' sustainability claims (including on plastic packaging). Regulators in the EU and the UK are bolstering consumer protection guidance on environmental claims, making regulatory action on this topic more likely in future.

Climate litigation is breaking new ground in the courts. Plastic producers are already being challenged on expansion plans, whilst climate cases are establishing strategies and precedents that could be used against Big Food on plastics in future.

Concerns about health hazards associated with plastics have triggered comparisons to asbestos. Class actions on the health impacts of chemicals have proliferated in the US, and have started to shift 'downstream', from chemicals manufacturers to companies that use them in their operations. Legal commentators have suggested chemicals associated with plastics may be next in line for legal challenges.

Investors and asset managers should consider their own legal obligations in relation to plastic-related risk, including fiduciary duties to manage risk appropriately, statutory duties to consider the adverse impact of their investments on the environment and disclosure obligations.

Understanding what actions companies should be taking to reduce their environmental impacts and manage plastic-related risk is essential if investors and asset managers are to ensure compliance with these obligations – and be part of the solution to the plastics crisis. So far, meaningful action on plastics from Big Food players has been limited. Rather than committing to the only real answer to the problem – reducing their plastic footprint, including through implementing re-use and refill systems – companies have so far favoured investing in 'false solutions' to the plastics crisis.

### **With the walls closing in on single-use plastic, the investment community must act now to:**

- demand more transparency on their exposure to risks relating to single-use plastics;
- challenge the ambition of corporate targets; and
- scrutinise the adequacy of the policies in place to achieve them.

### **False solutions:**

Technologies that are unproven at scale, waste management processes for plastics that raise serious environmental concerns, substituting one single-use material for another, "clean-up" activities that do nothing to address the source of plastic waste, "plastic offsetting" schemes, hampered by the same limitations and concerns as carbon offsetting, and "downcycling" plastic products into materials that cannot then be recycled themselves.

# Big Food: Plastic risk model

We have identified three fields of impact of single-use plastic packaging:

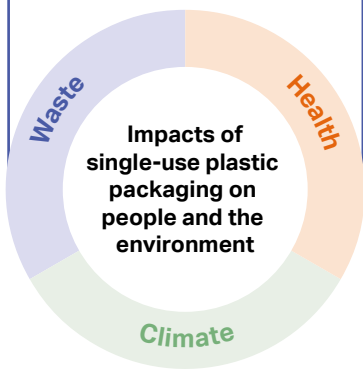
Waste

Climate

Health

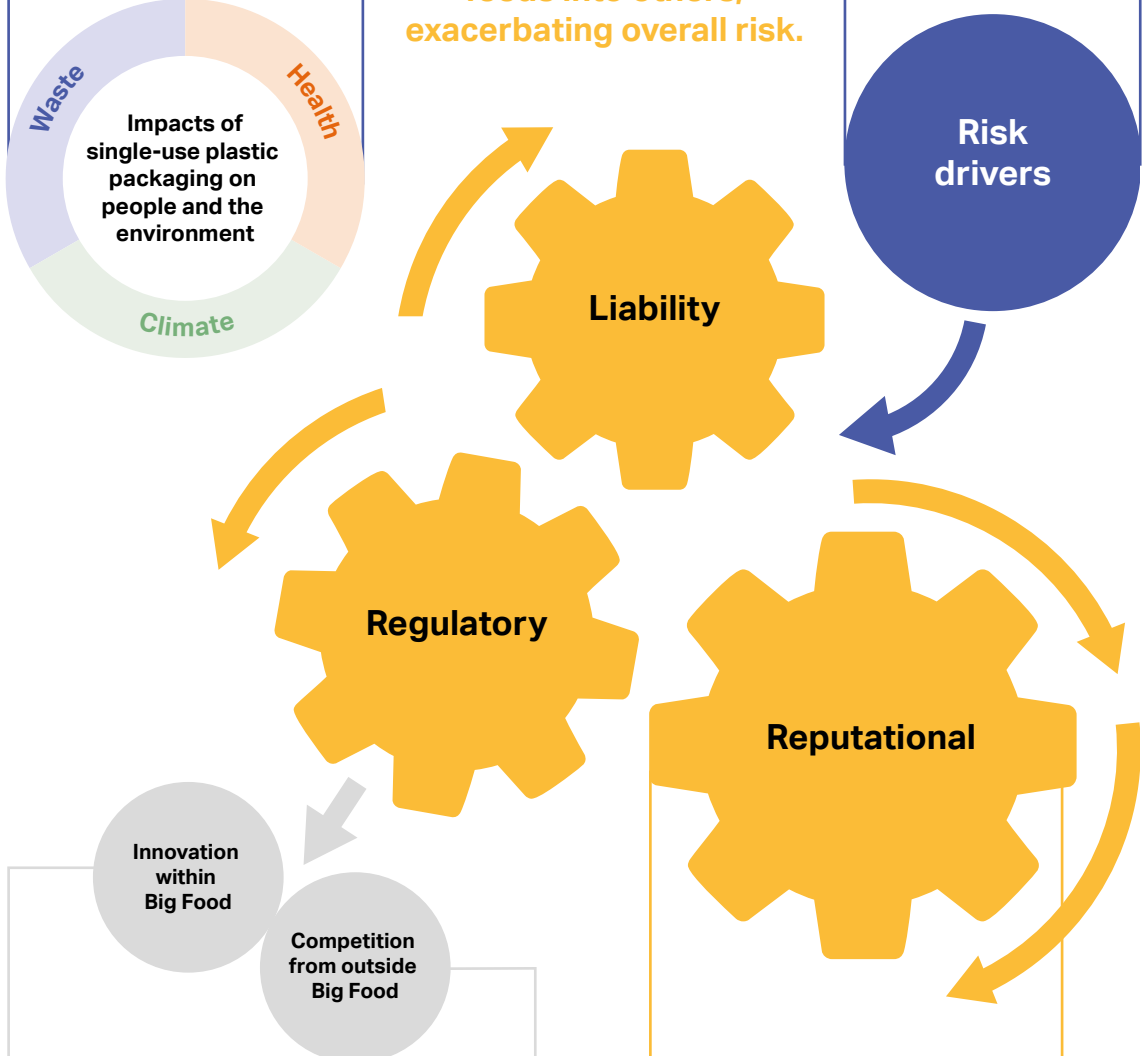
We have divided the **physical impacts** of plastics and plastic pollution on people and the environment into three fields of impact:

- Waste
- Climate
- Health



Risk drivers are trends that do not just affect Big Food, and do not just apply to the issue of plastics. They act to make these risks more likely to materialise and/or more likely to have severe consequences when they do.

**Building momentum in each risk category feeds into others, exacerbating overall risk.**



The greater the plastic-related threats to the business-as-usual operations of Big Food, the more likely challenger companies offering less plastic intensive/plastic-free business models emerge and compete for market share. Laggard companies also face competition from existing competitors acting more quickly and effectively on single-use plastics.

The Big Food sector is perhaps the most visible to consumers and the most dependent on public goodwill of all actors in the real economy. Brand value and customer loyalty have an essential role to play in their financial success. For this reason, Big Food is especially exposed to reputational risk.

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ClientEarth is a registered charity that uses the power of the law to protect people and the planet.

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