EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Brussels, 13 March 2020
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23 January 2018 and the Q&A document
(REV1) dated 13 November 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES ON ANIMAL FEED

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a 'third country'.[1] The Withdrawal Agreement[2] provides for a transition period ending on 31 December 2020.[3] Until that date, EU law in its entirety applies to and in the United Kingdom.[4]

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom's participation in the internal market,[5] in the EU Customs Union, and in the VAT and excise duty area.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation as of the end of the transition period (Part A below). This notice also explains certain relevant separation provisions of the Withdrawal Agreement (Part B below), as well as the rules applicable to Northern Ireland as of the end of the transition period (Part C below).

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1 A third country is a country not member of the EU.

2 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 ("Withdrawal Agreement").

3 The transition period may, before 1 July 2020, be extended once for up to 1 or 2 years (Article 132(1) of the Withdrawal Agreement). The UK government has so far ruled out such an extension.

4 Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

5 In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the 'country of origin principle', and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

Advice to stakeholders:

To address the consequences set out in this notice, feed business operators are in particular advised to:

- ensure establishment in the EU, and reflect this in the corresponding labelling; and
- adapt distribution channels, to take account of importation requirements.

A. LEGAL SITUATION AS OF THE END OF THE TRANSITION PERIOD

As of the end of the transition period, the EU rules in the field of animal feed will no longer apply to the United Kingdom.[6] This has in particular the following consequences in the different areas of EU feed law:

1. IMPORTS INTO THE EU

Regarding imports of feed into the EU, according to Article 24 of Regulation (EC) No 183/2005[7], the conditions set out in Article 6 of Commission Directive 98/51/EC[8] apply, which provide for the following: [9]

- Third country establishments must have a representative established in the EU;
- The representative must ensure that the establishments comply with feed hygiene requirements at least equivalent to those set by the EU;
- The representative must keep a register of products placed on the EU market from the establishments that he represents.

As of the end of the transition period, these rules apply to imports of feed from the United Kingdom into the EU.

2. LABELLING

According to Article 15(b) of Regulation (EC) No 767/2009,[10] feed has to be labelled with the name and the address of the feed business operator responsible for labelling. That person has to be established within the EU.[11]

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6 Regarding the applicability of the EU feed law to Northern Ireland, see Part C of this notice.

7 Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene, OJ L 35, 8.2.2005, p. 1.

8 Commission Directive 98/51/EC of 9 July 1998 laying down certain measures for implementing Council Directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector, OJ L 208, 24.7.1998, p. 43

9 The list of third countries from which feed may be imported into the EU as referred to in Article 23 of Regulation (EC) No 183/2005 has not yet been drawn up.

According to Article 16(1)(b) of Regulation (EC) No 1831/2003,[12] feed additives and premixtures of additives have to be labelled with the name and address of the person responsible for the labelling. That person has to be established within the EU.[13]

As of the end of the transition period, the labelling particulars may no longer include reference to a person responsible for the labelling established in the United Kingdom.

3. AUTHORISATION OF FEED ADDITIVES LINKED TO AN AUTHORISATION HOLDER

According to Article 3(3) of Regulation (EC) No 1831/2003, with regard to certain additives[14] no person other than the holder of the authorisation, his legal successor(s), or a person acting under his written authority is to first place the product on the market. The name of the authorisation holder is included in the Regulation granting the authorisation of those additives.[15]

3.1. Pending authorisation applications

According to Article 4(3) of Regulation (EC) No 1831/2003, the applicant for an authorisation or his representative is to be established in the EU.

Therefore, where the applicant for an authorisation or his representative is currently established in the United Kingdom, the applicant is to be established in the EU as of the end of the transition period or is to designate a representative established in the EU as of the end of the transition period. The relevant new contact details are to be communicated to the Commission.

The same applies to applications for modification of an authorisation in accordance with Article 13 of Regulation (EC) No 1831/2003, and to applications for renewal of an authorisation in accordance with Article 14 of that Regulation.

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[10] Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, OJ L 229, 1.9.2009, p. 1.

[11] This is necessary so that Member States may apply penalties, as required, to infringements of Regulation (EC) No 767/2009 within their jurisdiction pursuant to Article 31 thereof.

[12] Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition, OJ L 268, 18.10.2003, p. 29.

[13] Article 16(1) of Regulation (EC) No 1831/2003.

[14] Additives linked to an authorisation holder are those containing, consisting of or produced from GMOs and additives belonging to the following categories: zootechnical additives, coccidiostats and histomonostats.

[15] Article 9(6) of Regulation (EC) No 1831/2003.

3.2. Authorised feed additives

The holder of an authorisation, whose name is mentioned in the authorisation Regulation in accordance with Article 9(6) of Regulation (EC) No 1831/2003, or his representative is to be established in the EU.

Therefore, where the holder of an authorisation or his representative is currently established in the United Kingdom, the holder is to be established in the EU as of the end of the transition period or to designate a representative established in the EU as of the end of the transition period.

The Commission has amended the existing authorisations to this effect by the adoption of the following implementing measures:

- Commission Implementing Regulation (EU) 2019/138;[16]
- Commission Implementing Regulation (EU) 2019/146;[17]
- Commission Implementing Regulation (EU) 2019/221.[18]

4. AUTHORISATION OF GENERIC FEED ADDITIVES

For feed additives that are not linked to a specific authorisation holder (i.e. feed additives other than those referred to in Section 3) ("generic feed additives")[19] the following applies:

- According to Article 4(3) of Regulation (EC) No 1831/2003, the applicant for an authorisation or his representative is to be established in the EU. If the authorisation has not yet been granted, the applicant established in the United Kingdom is to be established in the EU or is to designate a representative established in the EU and is to communicate the relevant contact details to the Commission;

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16 Commission Implementing Regulation (EU) 2019/138 of 29 January 2019 amending Regulations (EC) No 1356/2004, (EC) No 1464/2004, (EC) No 786/2007, (EC) No 971/2008, (EU) No 1118/2010, (EU) No 169/2011 and Implementing Regulations (EU) No 888/2011 and (EU) No 667/2013 as regards the name of the holder of the authorisation for feed additives, OJ L 26, 30.1.2019, p.1.

17 Commission Implementing Regulation (EU) 2019/146 of 30 January 2019 amending Implementing Regulation (EU) 2015/502, concerning the authorisation of the preparation of Saccharomyces cerevisiae NCYC R404 as a feed additive for dairy cows, OJ L 27, 31.1.2019, p. 12.

18 Commission Implementing Regulation (EU) 2019/221 of 6 February 2019 amending Regulations (EC) No 785/2007, (EC) No 379/2009, (EC) No 1087/2009, (EU) No 9/2010, (EU) No 337/2011 and Implementing Regulations (EU) No 389/2011, (EU) No 528/2011, (EU) No 840/2012, (EU) No 1021/2012, (EU) 2016/899, (EU) 2016/997, (EU) 2017/440 and (EU) 2017/896 as regards the name of the holder of the authorisation and the representative of the holder of the authorisation for certain feed additives, OJ L 35, 7.2.2019, p. 28.

19 Technological additives, sensory additives and nutritional additives. See Annex I to Regulation (EC) No 1831/2003.

- The same applies to applications for renewal of an authorisation in accordance with Article 14 of Regulation (EC) No 1831/2003;

- If the generic feed additive has already been authorised, the (former) applicant does not need to be established in the EU or to designate a representative in the EU.

5. LIST OF INTENDED USES OF FEED INTENDED FOR PARTICULAR NUTRITIONAL PURPOSES (PARNUTS)

The applications for PARNUTs are regulated in Articles 9 and 10 of Regulation (EC) No 767/2009. According to Article 10(2) of Regulation (EC) No 767/2009, an applicant for updating the list of intended uses has to be established in the EU.

If the authorisation has not yet been granted, the applicant has to be established in the EU at the end of the transition period.

If the PARNUT has already been authorised, the (former) applicant does not need to be established in the EU.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT[20]

1. FEED OF NON-ANIMAL ORIGIN

Article 41 of the Withdrawal Agreement provides that an existing and individually identifiable good (as provided for therein) lawfully placed on the market in the EU or the United Kingdom before the end of the transition period may be further made available on the market of the EU or of the United Kingdom and circulate between these two markets until it reaches its end-user.

The economic operator relying on that provision bears the burden of proof of demonstrating on the basis of any relevant document that the good was placed on the market in the EU or the United Kingdom before the end of the transition period.[21]

For the purposes of these provisions, 'placing on the market' means the first supply of a good for distribution, consumption or use on the market in the EU or the United Kingdom in the course of a commercial activity, whether in return for payment or free of charge.[22] 'Supply' means that 'an existing and

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[20] If an individual feed has been held in the EU, before the end of the transition period, for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, this "stock" of feed can be sold, distributed or transferred in the EU after the end of the transition period (see the definition in Article 3(8) of Regulation (EC) No 178/2002: "'placing on the market' means the holding of food or feed for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves")

[21] Article 42 of the Withdrawal Agreement.

[22] Article 40(a) and (b) of the Withdrawal Agreement.

individually identifiable good, after the stage of manufacturing has taken place, is the subject matter of a written or verbal agreement between two or more legal or natural persons for the transfer of ownership, any other property right, or possession concerning the good in question, or is the subject matter of an offer to a legal or natural person or persons to conclude such an agreement.'[23]

Example: An individual feed sold by an UK-based producer to a UK-based wholesaler before the end of the transition period, and labelled with a responsible feed business operators established in the United Kingdom can still be imported into the EU without the need for re-labelling the feed product.

This is without prejudice to sanitary or phytosanitary controls that may apply to imports as of the end of the transition period.

2. FEED OF ANIMAL ORIGIN

The rules set out in Section B.1 of this notice do not apply to feed of animal origin.[24]

These products have to comply with EU rules for feed set out in Section A of this notice as of the end of the transition period, even if the product had been placed on the UK market before the end of the transition period.

C. APPLICABLE RULES FOR FEED IN NORTHERN IRELAND AFTER THE END OF THE TRANSITION PERIOD

As from the end of the transition period, the Protocol on Ireland/Northern Ireland ('IE/NI Protocol') applies.[25] The IE/NI Protocol is subject to periodic consent of the Northern Ireland Legislative Assembly, the initial period of application extending to 4 years after the end of the transition period.[26]

The IE/NI Protocol makes certain provisions of EU law applicable also to and in the United Kingdom in respect of Northern Ireland. It also provides that insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, it is assimilated to a Member State.[27]

The IE/NI Protocol provides that EU feed law applies to and in the United Kingdom in respect of Northern Ireland.[28]

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23 Article 40(c) of the Withdrawal Agreement.

24 Article 41(3)(b) of the Withdrawal Agreement.

25 Article 185 of the Withdrawal Agreement.

26 Article 18 of the IE/NI Protocol.

27 Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/NI Protocol.

28 Article 5(4) and section 34 of annex 2 to the IE/NI Protocol.

This means that, after the end of the transition period, references to the EU in Parts A and B of this notice have to be understood as including Northern Ireland, whereas references to the United Kingdom have to be understood as referring only to Great Britain.

More specifically, this means *inter alia* the following:

- Feed placed on the market in Northern Ireland has to comply with EU feed law as regards authorisation requirements, labelling etc.;
- Feed shipped from Northern Ireland to the EU is not imported feed (see Section A.1 of this notice);
- Feed shipped from Great Britain to Northern Ireland is imported feed (see Section A.1 of this notice);
- The authorisation holder/applicant may be established in Northern Ireland (see Sections A.3 and A.4 of this notice).

However, the IE/NI Protocol excludes the possibility for the United Kingdom in respect of Northern Ireland to

- participate in the decision-making and decision-shaping of the Union;[29]
- initiate objections, safeguard or arbitration procedures to the extent that they concern technical regulations, standards, assessments, registrations, certificates, approvals and authorisations issued or carried out by EU Member States;[30]
- act as leading authority for assessments, examinations and authorisations.[31]

More specifically, this means *inter alia* the following:

- The United Kingdom, in respect of Northern Ireland, cannot start the procedure for updating the list of PARNUTS.

The website of the Commission on animal feed (https://ec.europa.eu/food/safety/animal-feed_en) provides general information on animal feed as well as a series of "Questions and answers" in relation to animal nutrition. These pages will be updated with further information, where necessary.

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[29] Where an information exchange or mutual consultation is necessary, this will take place in the joint consultative working group established by Article 15 of the IE/NI Protocol.

[30] Fifth subparagraph of Article 7(3) of the IE/NI Protocol.

[31] Article 13(6) of the IE/NI Protocol.