



Brussels, 25 March 2020 Rev1

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF ORGANIC PRODUCTION METHODS (“ORGANIC PRODUCTS”)

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that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 after 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 in Northern Ireland after the end of the transition period (Part C below).

Advice to stakeholders:

To address the consequences set out in this notice, stakeholders engaged in the production, distribution and certification of organic products are in particular advised to:

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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.

- ensure that the control body can legally supply certification services after the end of the transition period; and
- adapt distribution channels, to take account of importation requirements.

Please note:

This notice does not address

- general EU rules on food and feed; and
- EU rules on geographic indications.

For these aspects other notices are in preparation or have been published.⁶

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the EU rules in the field of organic production no longer apply to the United Kingdom.⁷ This has in particular the following consequences:

According to Regulation (EU) 2018/848,⁸ only products satisfying the requirements of that Regulation can bear terms referring to the organic production method (e.g. organic, bio, eco, etc.) or the EU organic logo.

According to Articles 34 and 35 of Regulation (EU) 2018/848, the control authorities and bodies of the EU Member States are responsible for issuing certificates to operators and group of operators necessary for placing such products on the EU market.

- For an organic product placed on the EU market after the end of the transition period, the certificates issued by control authorities and bodies in the United Kingdom⁹ are no longer valid.
- For an organic product from the United Kingdom imported to the EU market after the end of the transition period, the rules laid down in Article 45 of Regulation (EU) 2018/848 apply. Thus, products imported from the United Kingdom can be placed on the EU market as organic provided that:
 - The product has been produced and imported in compliance with Regulation (EU) 2018/848 and legislation based on it;

⁶ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

⁷ Regarding the applicability of the EU law on organic products to Northern Ireland, see Part C of this notice.

⁸ Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products, OJ L 150, 14.6.2018, p. 1. This Regulation will apply as of 1 January 2021, and replace the currently-applicable Regulation (EC) No 834/2007.

⁹ On the basis of Article 29 of Regulation (EC) No 834/2007.

- The operators at all stages of production, preparation and distribution in the UK have submitted their activities to the control of a control body recognised for the purpose of compliance in accordance with Article 46(1) of Regulation (EU) 2018/848 and can provide the relevant certificate.¹⁰

Further to the rules of Article 45 of Regulation (EU) 2018/848, organic products from the UK might be imported under the transitional rules of Article 57 of that Regulation, provided that:

- The product has been produced and imported in accordance with production rules **equivalent to** those of Regulation (EC) No 834/2007; and
 - The operators at all stages of production, preparation and distribution in the UK have submitted their activities to the control of a control body recognised for the purpose of equivalency in accordance with Article 57 of Regulation (EU) 2018/848 certifying that the product has been produced and imported in accordance with production rules equivalent to those of Regulation (EC) No 834/2007.
- Organic products from a third country other than the United Kingdom can continue to be placed on the EU market after the end of the transition period as organic on the basis of certificates issued by bodies currently recognised in accordance with Articles 45 and 57 of Regulation EU 2018/848 for the third country concerned, including recognised bodies established in the UK.¹¹

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT¹²

1. FOOD OF NON-ANIMAL ORIGIN

Article 41(1) of the Withdrawal Agreement provides that an existing and individually identifiable good 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.¹³

¹⁰ The secondary legislation implementing the compliance system is in the process of adoption.

¹¹ This is currently only the case for one UK-based body, see Annex IV of Regulation (EC) No 1235/2008.

¹² If an individual food 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 food 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”)

¹³ A product which is subject to important changes (such as transformation), and subsequently sold, is a new product placed on the market.

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.¹⁴

For the purposes of that provision, “placing on the market” means the first supply of a good for distribution, consumption or use on the market in the course of a commercial activity, whether in return for payment or free of charge.¹⁵ “Supply of a good for distribution, consumption or use” means that “an existing and 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.”¹⁶

Example: An individual organic food product sold by a UK-based producer before the end of the transition period to a UK-based wholesaler based on a certificate issued by a control body established in the United Kingdom can still be distributed further into the EU on the basis of that certificate.

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

2. FOOD OF ANIMAL ORIGIN

The rules set out in Section B.1 of this notice do not apply to food of animal origin.¹⁷

These products have to comply with EU rules for food set out in section A of this notice after the end of the transition period, no matter if the product has had been put on the UK market before the end of the transition period.

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

After the end of the transition period, the Protocol on Ireland/Northern Ireland (“IE/Ni Protocol”) applies.¹⁸ 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.¹⁹

¹⁴ Article 42 of the Withdrawal Agreement.

¹⁵ Article 40(a) and (b) of the Withdrawal Agreement.

¹⁶ Article 40(c) of the Withdrawal Agreement.

¹⁷ Article 41(3)(b) of the Withdrawal Agreement.

¹⁸ Article 185 of the Withdrawal Agreement.

¹⁹ Article 18 of the IE/Ni Protocol.

The IE/Ni Protocol makes certain provisions of EU law applicable also to and in the United Kingdom in respect of Northern Ireland. In the IE/Ni Protocol, the EU and the United Kingdom have furthermore agreed that insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, Northern Ireland is treated as if it were a Member State.²⁰

After the end of the transition period, Regulation (EU) 2018/848 applies to and in the United Kingdom in respect of Northern Ireland.²¹

This means that 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:

- Organic products placed on the market in Northern Ireland have to comply with Regulation (EU) 2018/848;
- Organic products shipped from Northern Ireland to the EU are not imported organic products (see above, section A);
- Organic products shipped from Great Britain to Northern Ireland are imported organic products and have to comply with EU rules for imports of organic products (see above, section A);
- In the context of Regulation (EU) 2018/848, control bodies established in Northern Ireland are considered as control bodies established in a Member State and control bodies in Northern Ireland are not subject to the recognition of third country control body under Articles 46 and 57 of Regulation (EU) 2018/848. The UK competent authority is the competent authority for control bodies in Northern Ireland.
- Control bodies established in Northern Ireland may provide the certificate referred to in Article 35 of Regulation (EU) 2018/848.²²

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;²³
- initiate objections, safeguard or arbitration procedures to the extent that they concern regulations, standards, assessments, registrations, certificates, approvals and authorisations issued or carried out by EU Member States;²⁴

²⁰ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/Ni Protocol.

²¹ Article 5(4) of the IE/Ni Protocol and section 33 of Annex 2 to that Protocol.

²² Second subparagraph of Article 7(3) of the IE/Ni Protocol.

²³ 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.

²⁴ Fifth subparagraph of Article 7(3) of the IE/Ni Protocol.

- act as leading authority for assessments, examinations and authorisations.²⁵

The websites of the Commission on organic farming (https://ec.europa.eu/agriculture/organic/index_en) provide for general information concerning organic farming. These pages will be updated with further information, where necessary.

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²⁵ Article 13(6) of the IE/NI Protocol.