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Rev1

## **NOTICE TO STAKEHOLDERS**

### **WITHDRAWAL OF THE UNITED KINGDOM AND EU FOOD LAW**

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, unless a ratified withdrawal agreement<sup>1</sup> establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').<sup>2</sup> The United Kingdom will then become a 'third country'.<sup>3</sup>

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, food business operators are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, EU food law<sup>4</sup> no longer applies to the United Kingdom. The legal consequences presented below stem from EU food law with regard

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<sup>1</sup> Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

<sup>2</sup> Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

<sup>3</sup> A third country is a country not member of the EU.

<sup>4</sup> See Article 3(1) of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1). This notice also addresses the EU rules on organic production. This notice does not address the EU quality schemes (Protected Designation of Origin (PDO) and the Protected Geographical Indication - PGI). Nor does this notice address introduction into the Union of personal consignments of products of animal origin of a non commercial character which form part of travellers' luggage, or are sent as small consignments to private persons, or are ordered remotely (for example, by mail, by telephone or via the internet) and delivered to the consumer (see Commission Regulation (EC) No 206/2009 of 5 March 2009 on the introduction into the Community of personal consignments of products of animal origin and amending Regulation (EC) No 136/2004, OJ L 77, 24.3.2009, p. 1).

to food placed on the EU-27 market<sup>5</sup> as from the withdrawal date and coming from a third country (i.e. imported).

This notice is also relevant for food coming from the Channel Islands and Isle of Man.<sup>6</sup>

## 1. FOOD LABELLING AND FOOD INFORMATION, HEALTH AND IDENTIFICATION MARKS

EU food law harmonises the labelling of food placed on the EU market. The applicable rules are in particular contained in the following pieces of EU legislation:

- Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers;<sup>7</sup>
- Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods;<sup>8</sup>
- Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control;<sup>9</sup>
- Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed,<sup>10</sup> as well as Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC<sup>11</sup>;
- Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products;<sup>12</sup>
- EU legislation on the definition, description, presentation and labelling of spirit drinks,<sup>13</sup> and on honey;<sup>14</sup>

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<sup>5</sup> For goods, including food, placed on the EU market *before* the withdrawal date, the EU is trying to agree solutions with the United Kingdom in the withdrawal agreement. The essential principles of the EU's position on goods, including food, placed on the market under Union law before the withdrawal date are available here: [https://ec.europa.eu/commission/publications/position-paper-goods-placed-market-under-union-law-withdrawal-date\\_en](https://ec.europa.eu/commission/publications/position-paper-goods-placed-market-under-union-law-withdrawal-date_en). Please note that the essential principles of the EU's position on goods build on one single definition of "placing on the market" ("first making available on the market").

<sup>6</sup> Regulation (EEC) No 706/73 of the Council of 12 March 1973 concerning the Community arrangements applicable to the Channel Islands and the Isle of Man for trade in agricultural products (OJ L 68, 15.3.1973. p. 1).

<sup>7</sup> OJ L 304, 22.11.2011, p. 18.

<sup>8</sup> OJ L 404, 30.12.2006, p. 9.

<sup>9</sup> OJ L 181, 29.6.2013, p. 35.

<sup>10</sup> OJ L 268, 18.10.2003, p. 1.

<sup>11</sup> OJ L 268, 18.10.2003, p. 24.

<sup>12</sup> OJ L 347, 20.12.2013, p. 671 .

- Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products.<sup>15</sup>

The EU food labelling rules apply to all food placed on the EU market, independently of the place of production of the food.

In some instances, EU food law may require some changes of the labelling of food placed on the EU market due to the fact that the United Kingdom will be a third country as of the withdrawal date. Examples include the following:

- Mandatory presentation of the origin of a food product, where the presentation refers to EU or non-EU;<sup>16</sup>
- Mandatory labelling of the name or business name and address of the EU-27 importer of food from the United Kingdom;<sup>17</sup>
- Mandatory health or identification marks according to Article 5 of Regulation (EC) No 853/2004. As of the withdrawal date the health mark<sup>18</sup> or the identification mark<sup>19</sup> shall no longer include the "EC" abbreviation,<sup>20 21</sup> which is reserved for establishments located in the EU, but shall only include the name of the country (in full or with the ISO two-letter code) where the establishment is located.

Food business operators are advised to assess the need for possible changes to the labelling of food placed on the EU-27 market as of the withdrawal date.

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<sup>13</sup> Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks, OJ L 39, 13.2.2008, p. 16.

<sup>14</sup> Council Directive 2001/110/EC of 20 December 2001 relating to honey (OJ L 10, 12.1.2002, p. 47).

<sup>15</sup> OJ L 189, 20.7.2007, p. 1.

<sup>16</sup> See, for example, the labelling of "EU Agriculture" and "non-EU Agriculture" according to Article 24 of Council Regulation (EC) No 834/2007, or the labelling of honey as "blend of EU honeys" or "blend of non-EU honeys" (Article 2(4)(a) of Council Directive 2001/110/EC).

<sup>17</sup> Articles 8(1) and 9(1)(h) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers (OJ L 304, 22.11.2011, p. 18).

<sup>18</sup> Chapter III of Section I of Annex I to Regulation (EC) No 854/2004.

<sup>19</sup> Section I of Annex II to Regulation (EC) No 853/2004;

<sup>20</sup> Point 3(c) Chapter III of Section I of Annex I to Regulation (EC) No 854/2004.

<sup>21</sup> Point 8 of Part B of Section I of Annex II to Regulation (EC) No 853/2004.

## **2. FOOD INGREDIENTS, FOOD COMPOSITION, CONTAMINANTS AND RESIDUE LIMITS; FOOD CONTACT MATERIAL**

According to substantive EU food law, certain food must not be placed on the market unless it has been approved by the Commission (for example for food additives<sup>22</sup>, food flavourings,<sup>23</sup> smoke flavourings,<sup>24</sup> vitamins and minerals used in food,<sup>25</sup> including in food supplements<sup>26</sup> and any novel food<sup>27</sup>) or an individual applicant has obtained an authorisation by the Commission (for example for genetically modified food<sup>28</sup>).

Certain food is subject to specific composition requirements<sup>29</sup> and EU food law sets limits for contaminants<sup>30 31</sup>, and maximum residue levels of active substances.<sup>32</sup>

Food contact materials placed on the EU market are subject to EU rules<sup>33</sup>, and certain food contact materials are subject to additional specific measures.

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<sup>22</sup> Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ L 354, 31.12.2008, p. 16).

<sup>23</sup> Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods (OJ L 354, 31.12.2008, p. 34).

<sup>24</sup> Regulation (EC) No 2065/2003 of the European Parliament and of the Council of 10 November 2003 on smoke flavourings used or intended for use in or on foods (J L 309, 26.11.2003, p. 1).

<sup>25</sup> Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods, OJ L 404, 30.12.2006, p. 26.

<sup>26</sup> Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51).

<sup>27</sup> Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council (OJ L 327, 11.12.2015, p. 1).

<sup>28</sup> Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ L 268, 18.10.2003, p. 1).

<sup>29</sup> Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control (OJ L 181, 29.6.2013, p. 35).

<sup>30</sup> Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food (OJ L 37, 13.2.1993, p. 1).

<sup>31</sup> Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters (OJ L 164, 26.6.2009, p. 45).

<sup>32</sup> Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin (OJ L 70, 16.3.2005, p. 1); Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin (OJ L 152, 16.6.2009, p.11).

EU law on food ingredients and food composition, as well as EU law setting limits for contaminants and residues in food, applies to all food placed on the EU market, independently of the place of production of the food. The same applies for food contact material.<sup>34</sup>

### **3. REQUIREMENTS FOR FOOD BUSINESS OPERATORS AND AUTHORISATION HOLDERS, OR THEIR REPRESENTATIVES, TO BE ESTABLISHED IN THE EU; SUBMISSION OF EU AUTHORISATION REQUESTS THROUGH AN EU MEMBER STATE**

According to EU food law, in some instances the food business operators, authorisation holders, or their representatives have to be established in the EU. For example, According to Article 4(6) of Regulation (EC) No 1829/2003 on genetically modified food and feed, the applicant for an EU authorisation or his representative shall be established in the EU. As of the withdrawal date, establishment in the United Kingdom no longer complies with this requirement.

According to EU food law, in some instances EU authorisations require the submission of an authorisation dossier through the competent authority of an EU Member State. Examples include the following:

- Article 9(1)(a) of Regulation (EC) No 1935/2004 on food contact materials requires applications for authorisations of substances to be made via a competent authority of a EU Member State.
- Article 5 of Regulation (EC) No 1829/2003 on genetically modified food and feed requires applications for authorisation to be sent to the European Food Safety Authority (EFSA) through the competent authority of a Member State.

As of the withdrawal date, applications through the competent authority of the United Kingdom are no longer possible.

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<sup>33</sup> Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food (OJ L 338, 13.11.2004, p. 4).

<sup>34</sup> In addition, EU law sets for certain agricultural products originating in third countries maximum permitted levels of radio-caesium, which are checked upon importation into the EU, see Council Regulation (EC) No 733/2008 of 15 July 2008 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station (OJ L 201, 30.7.2008, p.1); Commission Regulation (EC) No 1609/2000 of 24 July 2000 establishing a list of products excluded from the application of Council Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station (OJ L 185, 25.7.2000, p.27) and Commission Regulation (EC) No 1635/2006 of 6 November 2006 laying down detailed rules for the application of Council Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station(OJ L 306, 7.11.2006, p.3).

#### **4. FOOD PRODUCTION RULES/FOOD HYGIENE RULES, FOOD IRRADIATION, ORGANIC PRODUCTION**

EU food law sets rules for the production of food in the EU and in third countries, if this food is placed on the EU market. EU food law also provides for specific controls upon entry of food into the EU.

##### **4.1. Food of animal origin<sup>35</sup>**

As of the withdrawal date, the importation of food of animal origin from the United Kingdom into the EU-27 is prohibited, unless certain requirements are met, including:

- The United Kingdom is "listed" by the Commission for public<sup>36</sup> and animal health<sup>37</sup> purposes. For the "listing" of a third country, Article 6(1)(a) of Regulation (EC) No 853/2004<sup>38</sup>, Article 11 of Regulation (EC) No 854/2004 and Article 8 of Council Directive 2002/99/EC apply.
- The establishment in the United Kingdom from which the food is dispatched, and obtained or prepared in, is "listed" by the Commission for public health purposes. For the "listing" of establishments, Article 6(1)(b)(i) of Regulation (EC) No 853/2004 and Article 12 of Regulation (EC) No 854/2004 apply.
- The United Kingdom is "listed" by the Commission as a third country having a residue control plan approved in accordance with Directive 96/23/EC<sup>39</sup> for the animals and animal products specified therein. For the "listing" of a third country, Chapter VI of Directive 96/23/EC applies.
- The imported food satisfies all food hygiene requirements set out in Articles 4 to 6 of Regulations (EC) No 852/2004<sup>40</sup> and Articles 3, 4, 5, 7 and 8 of Regulation

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<sup>35</sup> For "composite products" (i.e. foodstuff intended for human consumption that contains both processed products of animal origin and products of plant origin) Commission Decision 2007/275/EC of 17 April 2007 concerning lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC (OJ L 116, 4.5.2007, p. 9) and Commission Regulation (EU) No 28/2012 of 11 January 2012 laying down requirements for the certification for imports into and transit through the Union of certain composite products and amending Decision 2007/275/EC and Regulation (EC) No 1162/2009 (OJ L 12, 14.1.2012, p. 1) set specific rules.

<sup>36</sup> Article 11 of Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ L 139, 30.4.2004, p. 206).

<sup>37</sup> Article 8 of Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption (OJ L 18, 23.1.2003, p. 11).

<sup>38</sup> Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55).

<sup>39</sup> Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products (OJ L 125, 23.5.1996, p. 10).

<sup>40</sup> Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1).

(EC) No 853/2004<sup>41</sup>. The possibility for national measures to achieve EU food hygiene standards ("flexibility provisions") in accordance Article 13(3) of Regulation (EC) No 852/2004, Article 10(3) of Regulation (EC) No 853/2004 and Article 17(5) of Regulation (EC) No 854/2004 no longer applies to the United Kingdom.

Food business operators importing products of animal origin shall ensure that import takes place only if the above mentioned conditions are respected<sup>42</sup>.

As of the withdrawal date, these substantial requirements are controlled upon entry into the EU-27 by applying mandatory border checks at the first point of entry into the Union territory:

- This food can only enter the EU-27 through approved "border inspection posts"<sup>43</sup>;
- Each consignment undergoes documentary and identity checks, as well as at an appropriate frequency physical checks<sup>44</sup>;
- Each consignment has to be accompanied by a certificate in compliance with EU food legislation<sup>45 46</sup>.

#### **4.2. Food of non-animal origin**

Unlike for food of animal origin, the importation of food of non-animal origin is not subject to listing requirements of third countries and establishments.<sup>47</sup>

The EU Member States shall carry out regular official controls on imported food of non-animal origin. Those controls are organised on the basis of the multi-annual national control plan and in the light of potential risks. The controls shall cover all aspects of the food legislation. In cases of known or emerging risk, EU rules

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<sup>41</sup> Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55).

<sup>42</sup> Paragraphs 1 to 4 of Article 6 of Regulation (EC) No 853/2004.

<sup>43</sup> Commission Decision 2009/821/EC of 28 September 2009 drawing up a list of approved border inspection posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in Traces (OJ L 296, 12.11.2009, p. 1).

<sup>44</sup> Depending on the food in question, see Commission Decision 94/360/EC of 20 May 1994 on the reduced frequency of physical checks of consignments of certain products to be implemented from third countries (OJ L 158, 25.6.1994, p. 41).

<sup>45</sup> Article 14 of Regulation (EC) No 854/2004.

<sup>46</sup> Article 9 of Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption (OJ L 18, 23.1.2003, p. 11).

<sup>47</sup> With the exception of sprouts, where a specific regime applies (see Regulation (EU) 210/2013 of 11 March 2013 on the approval of establishments producing sprouts pursuant to Regulation (EC) No 852/2004 of the European Parliament and of the Council, OJ L 68, 12.3.2013, p. 24).

providing an increased level of official controls at designated points of entry into the Union may apply.<sup>48</sup>

In addition, in order to ensure phytosanitary protection of the EU-27 Member States, the following phytosanitary EU rules apply:

- The import of tubers of species of *Solanum* L. (ware potatoes), and their hybrids is prohibited.<sup>49</sup> For exceptions, Point 12 of Part A of Annex III to Council Directive 2000/29/EC applies.
- The import of certain fruits and vegetables is subject to specific requirements;<sup>50</sup>
- The import of food listed in Annex V to Directive 2000/29/EC (some of them subject to the import requirements mentioned in the previous point) requires a phytosanitary certificate. These foods are subject to 100% documentary controls at the point of entry. They are also subject to identity and physical controls, though at specified minimum frequencies depending on the risk that they present.<sup>51</sup>

#### **4.3. Irradiated food**

Food treated with ionising radiation is regulated by EU law.<sup>52</sup> As of the withdrawal date, the import of irradiated food from the United Kingdom into the EU-27 is prohibited, unless the irradiation facilities in the United Kingdom are "listed" by the Commission. For the "listing" of a third country, Article 9(2) of Directive 1999/2/EC applies.

#### **4.4. Recycled plastic materials and articles intended to come into contact with food**

According to EU law, authorisation holders shall notify to the Commission manufacturing or recycling sites in third countries in which the authorised recycling process of plastic materials and articles takes place.<sup>53</sup>

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<sup>48</sup> Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC (OJ L 194, 25.7.2009, p. 11).

<sup>49</sup> Point 12 of Part A of Annex III to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 169, 10.7.2000, p. 1).

<sup>50</sup> Part A of Annex IV to Directive 2000/29/EC.

<sup>51</sup> Article 13a of Directive 2000/29/EC.

<sup>52</sup> Directive 1999/2/EC of the European Parliament and of the Council of 22 February 1999 on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation (OJ L 66, 13.3.1999, p. 16).

<sup>53</sup> Article 10(3) of Commission Regulation (EC) No 282/2008 of 27 March 2008 on recycled plastic materials and articles intended to come into contact with foods (OJ L 86, 28.3.2008, p. 9).

## 5. CERTIFICATES FOR ORGANIC PRODUCTION

According to Regulation (EC) No 834/2007<sup>54</sup>, 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 29, 27(4) and 2(n) of Regulation (EC) No 834/2007, the control authorities and bodies of the EU Member States are responsible for issuing documentary evidence (certificates) to the operators necessary for placing such products on the EU market.

For products placed on the EU-27 market as of the withdrawal date, the certificates issued by control authorities and bodies in the United Kingdom are no longer valid.

The import of organic products from the United Kingdom will be subject to the rules laid down in Title VI of Regulation (EC) No 834/2007. This requires, in particular, that the United Kingdom is "listed" in accordance with Article 33(2) of Regulation (EC) No 834/2007, or that a certificate has been issued by a body referred to in Article 33(3) of Regulation (EC) No 834/2007.

The websites of the Commission on food imports ([https://ec.europa.eu/food/safety/official\\_controls/legislation/imports\\_en](https://ec.europa.eu/food/safety/official_controls/legislation/imports_en)) and organic farming ([https://ec.europa.eu/agriculture/organic/index\\_en](https://ec.europa.eu/agriculture/organic/index_en)) provide for general information concerning EU food legislation for imported food and organic farming. These pages will be updated with further information, where necessary.

European Commission  
Directorate-General for Health and Food Safety  
Directorate-General for Agriculture and Rural Development

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<sup>54</sup> Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ L 189, 20.7.2007, p. 1).