



## EUROPEAN COMMISSION

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DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND  
TECHNOLOGY

Brussels, 16 March 2020

### NOTICE TO STAKEHOLDERS

## WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN RELATION TO ONLINE SALES (B2C) OF GOODS WITH SUBSEQUENT PARCEL DELIVERY (INCL. ASPECTS OF ‘ONLINE PHARMACIES’)

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**INTRODUCTION**

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a ‘third country’.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

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,<sup>5</sup> 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).

**Advice to stakeholders:**

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

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<sup>1</sup> A third country is a country not member of the EU.

<sup>2</sup> 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”).

<sup>3</sup> 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.

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

<sup>5</sup> 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.

- assess the need to be established in the EU;
- adapt distribution channels.

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

As of the end of the transition period, the EU rules relevant for B2C online sales no longer apply to the United Kingdom.<sup>6</sup> This has in particular the following consequences:

### **1. SALES CONTRACT**

#### **1.1. EU e-commerce legislation**

EU law provides that providers of information society services, such as webshops or online marketplaces, established in the EU are subject to the law of the Member State where the provider is established ('country of origin principle').

As of the end of the transition period, companies established in the United Kingdom providing information society services into the EU will fall under the jurisdiction of each individual EU Member State. The 'country of origin principle' set out by EU law no longer applies.

**More information is available in the '*Notice to stakeholders – Withdrawal of the United Kingdom and EU legislation in the field of electronic commerce and net neutrality*'.<sup>7</sup>**

#### **1.2. Consumer protection**

##### *1.2.1. Applicable law*

According to EU law, where a consumer concludes a contract with a professional in another country who, by any means, directs his commercial activities to the consumer's country of residence, the contract is generally governed by the law of the country where the consumer has his or her habitual residence. It is possible to choose another law but that choice cannot deprive the consumer of the protection afforded by the law of the habitual residence which cannot be derogated from by agreement under that law.

##### *1.2.2. EU consumer protection legislation*

EU law sets rules that protect a consumer purchasing goods from a trader. These rules relate in particular to pre-contractual information, the right to cancel a contract within 14 days, unfair contract terms and unfair commercial practices, and guarantees.

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<sup>6</sup> Regarding the applicability of the EU rules on customs, VAT, excise and goods to Northern Ireland, see Part C of this notice.

<sup>7</sup> [https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices\\_en#cnect](https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#cnect)

Even the choice of the law of a third country cannot deprive the consumer of the protection afforded by the law of the habitual residence.

**More information is available in the ‘Notice to stakeholders – Withdrawal of the United Kingdom and EU rules on consumer protection and passenger rights’.<sup>8</sup>**

## 2. PARCEL DELIVERY

### 2.1. Customs formalities

According to EU law, goods brought into the customs territory of the EU are subject to customs supervision and may be subject to customs controls. Goods have to be presented to customs. This applies equally to goods acquired online and subsequently delivered via parcel delivery from the United Kingdom as of the end of the transition period, whether those goods are sent by post or by express couriers

Concerning the customs clearance of the consignments, the legal framework applicable as of 1 January 2021 sets out the following requirements:

<b>Value of consignment</b>	<b>Post</b>	<b>Express</b>
Less than EUR 150	<ul style="list-style-type: none"> <li>– entry summary declaration (ENS)<sup>9</sup></li> <li>– customs declaration with a super-reduced dataset</li> <li>– presentation to customs</li> </ul>	
Above EUR 150	<ul style="list-style-type: none"> <li>– ENS</li> <li>– standard customs declaration (reduced dataset possible for goods up to EUR 1 000)</li> <li>– presentation to customs</li> </ul>	<ul style="list-style-type: none"> <li>– ENS</li> <li>– standard customs declaration for VAT and customs purposes</li> <li>– presentation to customs</li> </ul>

#### **Excise goods**

As excise goods are not covered by the import duty exemption for consignments of a value up to EUR 150, the simplified customs formalities mentioned above do not apply. Consequently a full customs declaration is needed for their release into free circulation.

#### **Fees**

<sup>8</sup> [https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices\\_en#justmove](https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#justmove)

<sup>9</sup> As of 15 March 2021

EU law provides that, as a general rule, no fees are to be charged for customs procedures.<sup>10</sup> However, the postal or express operator may charge a fee for dealing with customs procedures.

## 2.2. Fiscal aspects

### 2.2.1. Duties

According to EU law, a customs debt on import is incurred in particular through the placing of non-Union goods liable to import duty under the customs procedure of release for free circulation.

**More information is available in the ‘*Notice to stakeholders – Withdrawal of the United Kingdom and EU rules on customs debt and customs tariffs*’.<sup>11</sup>**

Consignments of a value up to EUR 150 dispatched directly from a third country business to an EU consumer are exempted of import duties.<sup>12</sup> This exemption does not apply to alcoholic and tobacco products, perfumes and toilet waters.<sup>13</sup>

### 2.2.2. VAT

According to the VAT Directive<sup>14</sup>, VAT is due at the importation of goods in the EU<sup>15</sup> at the rate that applies to the supplies of the same goods within the territory of the Member State of importation.<sup>16</sup> VAT is payable to customs authorities at the time of importation, unless the Member State of importation allows to enter import VAT in the periodical VAT return of the taxable person.<sup>17</sup> The taxable amount is based on the value for customs purposes, but increased (in so far as not yet already included) by (a) taxes, duties, levies and other charges due outside the Member State of importation, and those due by reason of importation, excluding the VAT to be levied, and (b) incidental expenses, such as commission, packing, transport and insurance costs, incurred up to the first place of destination within the territory of the Member State of importation as well as those resulting from transport to another place

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<sup>10</sup> Article 52(1) of Regulation (EU) No 952/2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1.

<sup>11</sup> [https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices\\_en#tradetaxud](https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#tradetaxud)

<sup>12</sup> Article 23 of Council Regulation (EC) No 1186/2009 setting up a Community system of reliefs from customs duty, OJ L 324, 10.12.2009, p. 23

<sup>13</sup> Article 24 of Council Regulation (EC) No 1186/2009.

<sup>14</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, p. 1.

<sup>15</sup> Article 2(1)(d) of the VAT Directive.

<sup>16</sup> Article 94(2) of the VAT Directive - the VAT rates applied in each Member State are here: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/vat/how\\_vat\\_works/rates/vat\\_rates\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_en.pdf).

<sup>17</sup> Article 211 of the VAT Directive.

of destination within the EU, if that other place is known when the chargeable event occurs.<sup>18</sup>

Concerning the payment of VAT due, the legal framework applicable as of 1 January 2021 sets out the following options:

- A one-stop-shop for the declaration and payment of the VAT due for imports of goods in the EU up to a value of EUR 150;<sup>19</sup> or
- The collection of the VAT due by the customs declarant (e.g. postal operator, courier firm, customs agents) which will pay it to the customs authorities via a monthly payment.<sup>20</sup>

### 2.2.3. *Excise duties*

Excise duties are due on the goods when they are released for consumption at the applicable rates for the Member State where the release physically takes place. There are no *de minimis* exemptions available for online sale.

## 2.3. Non-fiscal aspects

### 2.3.1. *Prohibitions and restrictions*

EU law establishes various ‘prohibitions and restrictions’ for the import/introduction of certain goods into the EU customs territory. These ‘prohibitions and restrictions’ apply also to introduction of goods into the EU customs territory by way of parcel delivery. They can concern a variety of different products that may be sold B2C, ranging from pharmaceuticals, or specimen of endangered species.

**More information is available in the ‘*Notice to stakeholders – Withdrawal of the United Kingdom and EU rules in the field of import/export licences for certain goods*’.**<sup>21</sup>

### 2.3.2. *Compliance with product rules*

Products sold online and sent from a third country to the EU are placed on the EU market and hence these products have to comply with all EU product safety rules.

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<sup>18</sup> Articles 85 and 86 of the VAT Directive.

<sup>19</sup> Articles 369l to 369x of the VAT Directive introduced by Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods, OJ L 348, 29.12.2017, p. 7.

<sup>20</sup> Articles 369y to 369zb of the VAT Directive introduced by Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods, OJ L 348, 29.12.2017, p. 7.

<sup>21</sup> [https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices\\_en#tradetaxud](https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#tradetaxud)

**More information is available in the ‘*Notice to stakeholders – Withdrawal of the United Kingdom and EU rules on in the field of industrial products*’,<sup>22</sup>**

EU law requires customs authorities of the EU Member States to be closely involved in the market surveillance activities and to cooperate with other authorities.<sup>23</sup>

In particular, customs authorities are to suspend the release of a product for free circulation and, in cooperation with market surveillance authorities, prevent it from being placed on the Union market where it presents a serious risk to health, safety, the environment or other public interest protected or the product is non-compliant with the applicable EU product safety legislation. In addition, excise products may be subject to packaging and labelling requirements under Union and national health legislation, as well as national requirements for the attachment of fiscal stamps.

### *2.3.3. Compliance with EU rules for the protection of intellectual property*

Under EU law, distribution rights are subject to exhaustion once the good protected by an intellectual property (IP) right has been put lawfully on the market within the EU, for example by the right owner or a licensee. As of the end of the transition period, the IP right is not exhausted if a good protected by that right has been lawfully put on the market of the United Kingdom.

Apart from the issue of exhaustion, EU rules provide for a specific regime for the enforcement of trademarks and other intellectual property rights registered in the EU, where products are imported. According to EU rules, an applicant can request the customs authorities of the Member States to take action with respect of goods suspected of infringing an intellectual property right.<sup>24</sup> as of the end of the transition period, customs may take action on the basis of these rules as regards goods imported from the United Kingdom.

## **3. REDRESS AND LITIGATION, PUBLIC ENFORCEMENT**

The EU jurisdictional rules which allow the consumer to sue the trader in the EU Member State where the consumer is domiciled apply, irrespective of whether the trader is domiciled in the EU or in a third country. However, for litigation that starts after the end of the transition period, the recognition and enforcement of an EU judgement in the United Kingdom and vice versa will be governed by national rules in the EU and in the United Kingdom.

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<sup>22</sup> [https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period\\_en](https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en)

<sup>23</sup> See Commission Notice ‘Blue Guide’, chapter 7.3. [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0726\(02\)&from=BG](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0726(02)&from=BG)

<sup>24</sup> Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights, OJ L 181, 29.6.2013, p. 15

As of the end of the transition period, EU law ensuring the availability of out-of-court dispute resolution and facilitating access to alternative dispute resolution no longer applies to the United Kingdom. The EU online dispute resolution platform<sup>25</sup> is no longer available in relation to traders established in the United Kingdom.

Further, the UK European Consumer Centre will cease to be a member of the ECC-Net<sup>26</sup>, which means there will not be assistance with cross-border complaints involving traders established in the United Kingdom. As from the withdrawal date, United Kingdom authorities will not be obliged to cooperate with other EU competent authorities in the case of cross-border infringements to EU consumer law under Regulation (EC) No2017/2394<sup>27</sup>.

**More information is available in the ‘Notice to stakeholders – Withdrawal of the United Kingdom and EU rules on consumer protection and passenger rights’.<sup>28</sup>**

#### **4. OTHER ISSUES**

##### **4.1. ‘Online pharmacies’**

EU law provides for a ‘common logo’ for online pharmacies established in the EU and offering medicinal products for sale at a distance to the public by means of information society services.<sup>29</sup> As of the end of the transition period, persons established in the United Kingdom can no longer avail themselves of this common logo.

##### **4.2. Tariffs for cross-border parcel delivery and regulatory oversight**

EU law provides for increased transparency of tariffs for cross-border parcel delivery.<sup>30</sup> While, as of the end of the transition period, the obligations stemming from Regulation 2018/644 no longer apply with regard to tariffs for parcel delivery to and from the United Kingdom, the transparency obligation according to Article 12 of Directive 97/67EC<sup>31</sup> continues to apply to Union universal service providers.

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<sup>25</sup> <https://ec.europa.eu/consumers/odr/main/?event=main.home2.show>

<sup>26</sup> [https://ec.europa.eu/info/live-work-travel-eu/consumers/resolve-your-consumer-complaint/european-consumer-centres-network\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumers/resolve-your-consumer-complaint/european-consumer-centres-network_en)

<sup>27</sup> Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws, OJ L 345, 27.12.2017, p.1.

<sup>28</sup> [https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period\\_en](https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en)

<sup>29</sup> See Title VIIA of Directive 2001/83/EC.

<sup>30</sup> Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services, OJ L 112, 2.5.2018, p. 19.

<sup>31</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, OJ L 15, 21.1.1998, p. 14.

## **B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT**

Some of the aspects set out in Section A of this notice are addressed in the Withdrawal Agreement in order to ensure an orderly withdrawal of the United Kingdom from the EU. In particular:

- Article 41 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.
- Article 61 of the Withdrawal Agreement provides that intellectual property rights exhausted both in the EU and the United Kingdom before the end of the transition period remain exhausted.
- Titles II and III of Part Three of the Withdrawal Agreement provide for rules in relation to the customs status, VAT, and excise for goods the movement of which started before the end of the transition period but ends thereafter ('sailing goods').

## **C. APPLICABLE RULES 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.<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup>

The IE/NI Protocol provides that the rules set out in section A.2 (with the exception of the rules referred to in A.2.3.3, which only apply to and in the United Kingdom in respect of Northern Ireland to the extent set out in section 45 of Annex 2 to the IE/NI Protocol) and A.4.1. of this notice apply to and in the United Kingdom in respect of Northern Ireland.<sup>35</sup>

This means that references to the EU in Parts A and B (with the exception of the 2<sup>nd</sup> bullet point) 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.

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<sup>32</sup> Article 185 of the Withdrawal Agreement.

<sup>33</sup> Article 18 of the IE/NI Protocol.

<sup>34</sup> Article 7(1) of the Withdrawal Agreement in combination with Article 13(1) of the IE/NI Protocol.

<sup>35</sup> Article 5(4) and annex 2 to the IE/NI Protocol.

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

- Goods shipped from Northern Ireland to the EU are not an import for the purpose of the rules set out in section A.2 of this notice;
- Goods shipped from Great Britain to Northern Ireland are an import for the purpose of the rules set out in section A.2 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;<sup>36</sup>
- 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;<sup>37</sup>
- act as leading authority for assessments, examinations and authorisations;<sup>38</sup>
- invoke the country of origin principle or mutual recognition for products placed legally on the market in Northern Ireland.<sup>39</sup>

The relevant websites of the Commission provide general information concerning these aspects. These pages will be updated with further information, where necessary.

European Commission

Directorate-General Taxation and Customs Union

Directorate-General Justice and Consumer

Directorate-General for Health and Food Safety

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Directorate-General for Communications Networks, Content and Technology

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<sup>36</sup> 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.

<sup>37</sup> Fifth subparagraph of Article 7(3) of the IE/NI Protocol.

<sup>38</sup> Article 13(6) of the IE/NI Protocol.

<sup>39</sup> First subparagraph of Article 7(3) of the IE/NI Protocol.