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24 October 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF THE EXPLOITATION AND MARKETING OF NATURAL MINERAL WATERS

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that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 applicable after the end of the transition period (Part A below). This notice also explains certain relevant separation provisions of the Withdrawal Agreement (Part B

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.

below), as well as the rules applicable to 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 are in particular advised to assess whether they require a new recognition in order to market access.

Please note:

This notice does not address other aspects of EU food law, including EU general food law.

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, 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 (Recast)⁷ no longer apply to the United Kingdom.⁸ This has in particular the following consequences:

According to Article 1(1) and (2) and Article 2 of Directive 2009/54/EC, waters may only be marketed as natural mineral waters in the Union if they comply *inter alia* with the following:

- where waters are extracted from the ground of a Member State, the responsible authority of that Member State has recognised the waters as natural mineral waters in accordance with Directive 2009/54/EC;
- where waters are extracted from the ground of a third country, the responsible authority of a Member State has recognised the waters as natural mineral waters in accordance with Directive 2009/54/EC.

After the end of the transition period,

- waters extracted from the ground of, and recognised by the United Kingdom as natural mineral waters are extracted from the ground of a third country and are no longer authorised for import into the Union as natural mineral waters, unless they are recognised as such by the responsible authority of another Member State;

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

⁷ OJ L 164, 26.6.2009, p. 45.

⁸ Regarding the applicability of Directive 2009/54/EC to Northern Ireland, see Part C of this notice.

- waters extracted from the ground of a third country (other than the United Kingdom) and recognised as natural mineral waters by the responsible authority of the United Kingdom are no longer authorised for import into the Union as natural mineral waters, unless they are recognised as such by the responsible authority of another Member State.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT⁹

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.

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.¹⁰

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.¹¹ “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.”¹²

Example: An individual bottle of natural mineral water extracted from the UK ground and recognised by the United Kingdom and sold before the end of the transition period to a UK-based wholesaler can still be distributed further into the EU.

⁹ 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”).

¹⁰ Article 42 of the Withdrawal Agreement.

¹¹ Article 40(a) and (b) of the Withdrawal Agreement.

¹² Article 40(c) of the Withdrawal Agreement.

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.¹³ 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.¹⁴

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.¹⁵

The IE/Ni Protocol provides that Directive 2009/54/EC applies to and in the United Kingdom in respect of Northern Ireland.¹⁶

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:

- Natural mineral water placed on the market in Northern Ireland has to comply with Directive 2009/54/EC;
- Natural mineral water shipped from Northern Ireland to the EU is not imported Natural mineral water (see above, section A);
- Natural mineral water shipped from Great Britain to Northern Ireland is imported natural mineral water (see above, section A);
- The United Kingdom, in respect of Northern Ireland, continues to recognise under Directive 2009/54/EC waters extracted from the ground in Northern Ireland.¹⁷

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;

¹³ Article 185 of the Withdrawal Agreement.

¹⁴ Article 18 of the IE/Ni Protocol.

¹⁵ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/Ni Protocol.

¹⁶ Article 5(4) of the IE/Ni Protocol and section 33 of annex 2 to that Protocol.

¹⁷ The IE/Ni Protocol excludes the recognition, in the EU, of authorisations by the United Kingdom in respect of Northern Ireland (first subparagraph of Article 7(3) of the IE/Ni Protocol). However, in the present case, the second subparagraph of Article 7(3) of the IE/Ni Protocol applies.

- recognise under Directive 2009/54/EC waters extracted from the ground in third countries.¹⁸

The website of the Commission on food safety provides general information concerning the rules on the exploitation and marketing of natural mineral waters (https://ec.europa.eu/food/safety/labelling_nutrition/mineral_waters_en)

European Commission
Directorate-General Health and Food Safety

¹⁸ First subparagraph of Article 7(3) of the IE/NI Protocol.