EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Brussels, 8 May 2020
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7 October 2019

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES ON TOBACCO AND RELATED PRODUCTS

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a "third country".[1] The Withdrawal Agreement[2] provides for a transition period ending on 31 December 2020.[3] Until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 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 below), as well as the rules applicable to Northern Ireland after the end of the transition period (Part C below).

Advice to stakeholders:

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.

To address the consequences set out in this notice, stakeholders are in particular advised to prepare for specific requirements for shipments between the EU and the United Kingdom after the end of the transition period.

Please note:

This notice does not address:

- EU rules on indirect taxation (excise and VAT);
- EU rules on trademarks and their enforcement; and
- EU rules on the advertising and sponsoring of tobacco products as well as on audiovisual commercial communication.

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 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products,[7] [8] no longer apply to the United Kingdom.[9] This has in particular the following consequences:

1. REPORTING OF TOBACCO PRODUCTS AND NOTIFICATION OF E-CIGARETTES TO THE EU COMMON ENTRY GATE (EU-CEG)

Article 5 of Directive 2014/40/EU requires manufacturers and importers of tobacco products to submit to the competent authorities of Member States information on all tobacco products that are placed on the EU market (ingredients, emissions, product presentation).

In addition, Article 20(2) of Directive 2014/40/EU requires manufacturers and importers of electronic cigarettes and refill containers to submit a notification to competent authorities of Member States of any such products that they intend to place on the EU market.

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

7 OJ L 127, 29.4.2014, p. 1.

8 The term "tobacco product" in this notice should be read as including "related products", where applicable.

9 Regarding the applicability of Directive 2014/40/EU to Northern Ireland, see Part C of this notice.

The electronic submission of the required information on tobacco products and electronic cigarettes takes place via the EU Common Entry Gate (EU-CEG).[10]

After the end of the transitional period, the notification requirements set out in Directive 2014/40/EU will no longer apply to the products to be placed on the UK market. The EU-CEG can no longer be used for submissions to the United Kingdom. After the end of the transitional period, when submitting an updated version of a previous notification, EU manufacturers and importers will have to ensure that the UK market is no longer listed in those submissions.

2. COMBINED HEALTH WARNINGS ON TOBACCO PRODUCTS (COLOUR PHOTOGRAPHS)

Article 10 of Directive 2014/40/EU establishes a requirement for unit packets and outside packaging of tobacco products to carry combined health warnings. The combined health warnings consist of prescribed text warnings and corresponding colour photographs.[11]

These colour photographs are owned by the EU. Therefore, tobacco products placed on the UK market after the end of the transitional period, can no longer carry the colour photographs established under Directive 2014/40/EU.

3. UNIQUE IDENTIFIERS

Article 15 of Directive 2014/40/EU requires all unit packets of tobacco products to be marked with a unique identifier.[12]

- Tobacco products imported after the end of the transitional period from the United Kingdom into the EU market have to comply with the rules for importation into the EU. Thus, these tobacco products have to be marked with a unique identifier issued by the ID issuer of the EU Member State on whose market the product is placed.[13]

- Tobacco products exported after the end of the transitional period from the EU to the United Kingdom have to comply with the rules for exports from the EU. Thus, these products have to be marked with a unique identifier issued by the ID issuer of the EU Member State in which the product was manufactured.[14]

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10 https://ec.europa.eu/health/euceg/introduction_en.

11 Cf. Commission Delegated Directive 2014/109/EU of 10 October 2014 amending Annex II to Directive 2014/40/EU of the European Parliament and of the Council by establishing the library of picture warnings to be used on tobacco products, OJ L 360, 17.12.2014, p. 22.

12 Cf. Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products, OJ L 96, 16.4.2018, p. 7.

13 Article 4(2) of Implementing Regulation (EU) 2018/574.

14 Article 4(4) of Implementing Regulation (EU) 2018/574.

4. TRANSMISSION OF INFORMATION ON PRODUCT MOVEMENTS

Article 15 of Directive 2014/40/EU and Implementing Regulation (EU) 2018/574 requires the recording of movements of unit packets of tobacco products.[15]

After the end of the transitional period, product movements from the EU to the United Kingdom and vice-versa are exports/imports respectively, and have to be recorded accordingly.

5. PRIMARY AND SECONDARY REPOSITORIES

Article 15 of Directive 2014/40/EU and Articles 24, 26 and 27 of Implementing Regulation (EU) 2018/574 require the setting up of data storage infrastructure (primary repositories for each manufacturer and importer; a secondary repository containing a copy of all data stored in primary repositories) that allow the tracking and tracing of tobacco products.

After the end of the transitional period,

- all UK parties, namely the UK national authorities, the UK ID issuer, and UK economic operators have to be disconnected from primary repositories;

- all UK parties, namely the UK national authorities, the UK ID issuer, primary repositories contracted by manufacturers and importers solely established on the territory of the United Kingdom, and UK economic operators have to be disconnected from the secondary repository.

The data linked to the United Kingdom must remain in the repositories system and be stored in accordance with the applicable retention policy.[16]

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

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.[17]

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.[18] "Supply of a good for

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15 Cf. Chapter VI of Implementing Regulation (EU) 2018/574.

16 Articles 25(1)(e) and 27(10) of Implementing Regulation (EU) 2018/574.

17 Article 42 of the Withdrawal Agreement.

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

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."[19]

Example: A tobacco product sold by the UK-based manufacturer to a UK-based wholesaler before the end of the transition period can still be distributed further into a EU Member State which requires the identification code of the Member State of consumption without the need to replace the unique identifier with the unique identifier required for imported products.[20]

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.[21] 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.[22]

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.[23]

The IE/NI Protocol provides that Directive 2014/40/EU applies to and in the United Kingdom in respect of Northern Ireland.[24]

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:

- tobacco products placed on the market in Northern Ireland have to comply with Directive 2014/40/EU;

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19 Article 40(c) of the Withdrawal Agreement.

20 Without prejudice to requirements for national identification marks for fiscal purposes on the packaging.

21 Article 185 of the Withdrawal Agreement.

22 Article 18 of the IE/NI Protocol.

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

24 Article 5(4) of the IE/NI Protocol and section 47 of annex 2 to that Protocol.

- tobacco products manufactured in Northern Ireland and shipped to the EU are not an import for the purpose of Directive 2014/40/EU (see above, section A);

- tobacco products shipped from Northern Ireland to Great Britain are an export for the purpose of Directive 2014/40/EU (see above, section A);

- tobacco products shipped from Great Britain to Northern Ireland are an import for the purpose of Directive 2014/40/EU (see above, section A);

- to meet their regulatory requirements under Directive 2014/40/EU, in particular as regards reporting of tobacco products, notification of e-cigarettes, combined health warnings and traceability codes, economic operators have to contact the competent authorities and the ID issuer of the United Kingdom in respect of Northern Ireland.

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.[25]

The website of the Commission on EU rules on tobacco control policy (https://ec.europa.eu/health/tobacco/policy_en) provides general information concerning the regulatory framework for tobacco and related products. The website dedicated to the EU-CEG (https://ec.europa.eu/health/euceg) provides specific (technical) information on the submission of product information. The website dedicated to tobacco traceability (https://ec.europa.eu/health/tobacco/tracking_tracing_system_en) provides specific (technical) information on the reporting of product movements and transactional information. These pages will be updated with further information, where necessary.

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[25] 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.