



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMEs

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27 September 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF DETERGENTS

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020. Until that date, EU law in its entirety applies to and in the United Kingdom.³

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,⁴ 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 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 are in particular advised to:

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

⁴ 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 compliance with obligations for importers;
- adapt product labelling, where necessary; and
- ensure that required biodegradability tests are carried out by a laboratory approved by a Member State.

Please note:

This notice does not address

- EU general chemicals law;
- EU rules on good laboratory practice.

For these aspects, other notices are in preparation or have been published.⁵

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents⁶ no longer applies to the United Kingdom.⁷ This has in particular the following consequences:

1. RESPONSIBILITY FOR IMPORTERS

According to Article 2(10) of Regulation (EC) No 648/2004, a manufacturer is the person responsible for placing a detergent or a surfactant for a detergent on the EU market. The notion covers not only a producer, but also an importer.

According to Article 3(2) of Regulation (EC) No 648/2004, manufacturers of detergents or surfactants for detergents must be established in the EU and take responsibility for the conformity of detergents or surfactants for detergents with that Regulation.

After the end of the transition period, a manufacturer established in the United Kingdom will no longer be an economic operator established in the EU. As a consequence, an economic operator established in the EU and placing detergents or surfactants for detergents coming from the United Kingdom on the EU market, who was until then considered as a distributor, will become an EU importer in relation to such products. This operator will therefore have to comply with the obligations for manufacturers.

⁵ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

⁶ OJ L 104, 8.4.2004, p. 1.

⁷ Regarding the applicability of Regulation (EC) No 648/2004 to Northern Ireland, see Part C of this notice.

2. LABELLING

According to Article 11(2)(b) of Regulation (EC) No 648/2004, detergents must be labelled with the name or trademark of the party responsible for placing the product on the market.

If, before the end of the transition period, the manufacturer was established in the United Kingdom, the marking of the manufacturer on the packages, labels and accompanying documents has to be changed accordingly.

3. APPROVED LABORATORIES

Based on Articles 3 and 4, as well as Annexes II, III, IV and VIII to Regulation (EC) No 648/2004, the following tests are required:

- Primary biodegradability tests for surfactants in detergents;
- Ultimate biodegradability (mineralisation) tests for surfactants in detergents;
- Tests provided for under complementary risk assessment for surfactants in detergents.

According to Article 8(2) of Regulation (EC) No 648/2004, these tests have to be carried out by laboratories approved by a Member State.⁸ Compliance with this requirement is controlled on products placed on the market.⁹

For detergents placed on the market after the end of the transition period, tests required under Regulation (EC) No 648/2004 must have been carried out by a laboratory approved by an EU Member State.

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.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

⁸ The list of approved laboratories is published here: http://ec.europa.eu/growth/sectors/chemicals/legislation_en

⁹ Article 10 of Regulation (EC) No 648/2004.

¹⁰ Article 42 of the Withdrawal Agreement.

¹¹ 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.”¹²

Example: An individual detergent sold by the UK-based manufacturer to a UK-based wholesaler before the end of the transition period based on safety tests carried out by a laboratory approved by the United Kingdom can still be distributed further into the EU on the basis of those tests and with no need for re-labelling.

For further information regarding the notion of placing on the market and the demonstration of proof of placing on the market, please refer to Part B of the “*Notice to stakeholders – withdrawal of the United Kingdom and EU rules in the field of industrial products*” of 13 March 2020.¹³

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.¹⁴ 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.¹⁵

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.¹⁶

The IE/NI Protocol provides that Regulation (EC) No 648/2004 applies to and in the United Kingdom in respect of Northern Ireland.¹⁷

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:

¹² Article 40(c) of the Withdrawal Agreement.

¹³ https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_industrial_products.pdf.

¹⁴ Article 185 of the Withdrawal Agreement.

¹⁵ Article 18 of the IE/NI Protocol.

¹⁶ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/NI Protocol.

¹⁷ Article 5(4) of the IE/NI Protocol and section 23 of Annex 2 to that Protocol.

- A detergent placed on the market in Northern Ireland has to comply with Regulation (EC) No 648/2004.
- A detergent shipped to the EU from Northern Ireland is not an imported product for the purpose of Regulation (EC) No 648/2004.
- A detergent shipped from a third country or from Great Britain to Northern Ireland is an imported product for the purpose of Regulation (EC) No 648/2004.
- Test reports issued by a laboratory approved by a Member State are valid in Northern Ireland.
- Test reports issued by a laboratory in Great Britain approved by the United Kingdom are not valid in Northern Ireland. A laboratory in Northern Ireland, however, can continue to issue test reports in certain circumstances (see below).

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;¹⁸
- 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;¹⁹
- invoke the country of origin principle or mutual recognition for products placed legally on the market in Northern Ireland, or for certificates issued or other activities performed by authorities or bodies established in the United Kingdom.²⁰

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

- Test reports issued by a laboratory in Northern Ireland approved by the United Kingdom are valid only in Northern Ireland. These reports are not valid in the EU.²¹

The website of the Commission on Chemical Legislation (https://ec.europa.eu/growth/sectors/chemicals/legislation_en) provides for general information concerning detergents. These pages will be updated with further information, where necessary.

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

¹⁸ 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.

¹⁹ Fifth subparagraph of Article 7(3) of the IE/Ni Protocol.

²⁰ First subparagraph of Article 7(3) of the IE/Ni Protocol.

²¹ Fourth subparagraph of Article 7(3) of the IE/Ni Protocol.