

Trading with the EU after 1st January 2021

Food Products

From 1st January 2021 the UK will become a 3rd country to the EU and the following requirements will come into force.

You must comply with these requirements if you are trading your goods in the EU

Non-compliant goods will be refused entry to the EU and stopped at the border.

THESE RULES APPLY WHEN TRADING YOUR GOODS IN THE EU. OTHER RULES MAY APPLY WHEN TRADING WITH THE UK.

Key Information

- Name and address
- Labelling in the correct language
- EU approved test houses
- Organic Goods
- Origin labelling
- Loss of mutual recognition
- Further advice

Name and address

All food must be labelled with the name and address of the Food Business Operator (FBO) who is legally responsible for the food, the FBO must be 'established within the EU'.

'Established within the EU' means a business that is actively trading from, and has an element of their operation located in, one of the 27 member states of the EU.

The FBO named on the product must have a physical presence in the EU, be able to take responsibility for the goods, ensure food information on the goods is accurate and compliant, and the address must be 'genuine and substantive enough' to allow direct and swift contact with the FBO and enforcement action to be taken where necessary. Setting up a PO Box, mail forwarding address or answering service is not sufficient for you to be 'established in the EU'.

From 1st January 2021, if you are not established in the EU, the name and address details of the FBO who imports your goods into the EU must appear on your product.

The importer is legally responsible for the compliance of your goods; this is a significant responsibility; you will need to discuss these requirements and enter into a formal agreement with the importer.

You should start negotiating these agreements now.

Your name and address details can appear on the product in addition to those of the importer.

Each sale of your goods to the EU is a new import and each EU food business that purchases your goods for sale within Europe will be an importer whose details will need to appear on the product. You may need to negotiate agreements with multiple customers.

Alternatively, you can contract with a single importer who purchases bulk quantities of your goods for onward sale, by them, to other EU based FBO's (i.e. you sell the goods to them and then they sell them within Europe). In this scenario only the first importer's details need to appear on the product.

If you do not want to use an importer's details on your product you will need to move some aspect of your business within the EU (manufacture, distribution, administration etc.)

Your entire business does not need to be relocated in this way.

You can agree with the importer that they will relabel the goods with their name and address details, however, if the goods are not correctly labelled at the time of export, they are unlikely to be permitted entry to the EU.

Labelling in the correct language

Prepacked food must be labelled in the language of the EU member state where it is being first placed on the community market.

'prepacked food' means food and the packaging into which it was put before being offered for sale, whether it encloses the food completely or only partially, in such a way that the contents cannot be altered without opening or changing the packaging.

'Being placed on the community market' means the EU-27 member state where the food is first made available for supply to consumers or to other Food Business Operators (FBO's) for sale or processing (i.e. to be used in the manufacture of other food).

This means that goods which are just transiting through a member state are not yet on the community market.

Example:

You contract to sell your finished goods to a German retailer. The goods travel by lorry, leave the UK at Dover and land in the EU at Calais. The goods are transported by road from Calais to Hamburg where they are unloaded at the client's distribution centre.

The goods are placed on the community market once they are unloaded at Hamburg as they are now in the possession of the new owner and available for supply to consumers.

The goods need to be labelled in German.

The goods can be labelled in English (and other languages) in addition to the appropriate EU language.

Your legal responsibility is to label the food in the language of the member state where it is **first** placed on the market. If the importer chooses to sell the goods into other member states, **they** are responsible for labelling the goods in the language of those members states.

EU approved test houses

The United Kingdom Accreditation Service (UKAS) is the UK body that assess whether test houses and other bodies are competent to assess goods for compliance with EU legislation.

Any UK test house that is UKAS accredited is given notified body status, they can test products against the requirements of EU legislation and the results will be accepted across the EU.

From 1st January 2021 UK notified body accreditation will no longer be recognised in Europe, as such UK test houses will not be able to certify that UK goods comply with EU laws that insist on mandatory testing/examination.

This will have less effect on the food sector than on other sectors as EU food legislation does not normally specify mandatory testing in the legislation. Nevertheless, you may find that trading partners in the EU insist that any testing you conduct on goods supplied to them is conducted by an EU approved test house.

You should discuss this with your customers at the earliest opportunity.

Any goods held by EU enforcement agencies for suspected non-compliance on technical grounds (levels of pesticide residues for example) may insist that testing to prove the safety/compliance of the goods is conducted by an EU approved test house.

If your test house is established (and certified) in both the UK and EU it will still be able to certify the compliance of goods against EU requirements after 1st January 2021 but the testing must be carried out by the EU based lab. You should contact your test house to discuss this.

Organic Goods

Goods sold in the EU as organic must have been made, grown etc. in compliance with the EU rules on organic products, otherwise they cannot be sold in the EU as organic.

Third countries can apply to the EU to have their own organic rules recognised as equivalent to the EU rules, after which they can describe their products as organic in the EU.

From 1st January UK organic products will need to comply with GB organic rules which are functionally the same as the EU rules.

The EU has recognised UK organic control bodies for the purpose of exporting organic products to the EU until 31 December 2021; as such products certified as complying with the GB organic standard by a UK control body can continue to be sold in the EU after 1st January 2021.

Labelling and compositional requirements apply as normal with the following amendments from 1st January 2021:

Sale in GB only:

Food information must include the UK organic control body code e.g. 'GB-ORG-XX'

Sale in GB/EU/NI

Food information must include both the 'GB-ORG-XX' code to confirm the product meets the GB standard and the EU code 'GB-BIO-XXX' to confirm the product meets the equivalent EU standard.

Sale in 3rd countries

Food information must include the UK organic control body code e.g. 'GB-ORG-XX'.

Statement of agriculture (equivalent to origin declaration)

Organic products require statement of agriculture. For UK goods this will be one of:

- 'UK Agriculture' (98% UK ingredients)
- 'UK or non-UK Agriculture' (ingredients from inside and outside the UK)
- 'Non-UK Agriculture' (98% non-UK ingredients)

EU Organic logo

The EU organic logo is not mandatory for UK organic goods sold in GB but may be used until 31st December 2021 if the product meets the EU standard.

The EU organic logo is not mandatory for UK organic goods sold in the EU but may be used until 31st December 2021; if used the product must include both the UK statement of agriculture AND the EU statement of agriculture ('EU or non-EU Agriculture')

UK organic control body logos can continue to be used on all goods.



EU organic logo



Soil Association, UK organic control body logo

Origin labelling

From 1st January 2021 UK food cannot be declared as of EU origin.

Origin labelling is not normally mandatory unless consumers would be misled as to the origin of the product without it, as such most products are not labelled with their origin and so will not be affected.

Products can mislead as to their origin in several ways so you will need to be careful that you do not inadvertently mislead consumers.

Things to look out for include:

Words and phrases

- Statements such as 'Belgian chocolate', 'French patisserie' and 'Italian pasta sauce' shouldn't be used unless they are accurate (i.e. the product is actually Belgian chocolate).
- Words like 'style' can't be used to justify misleading statements.
- Where a product is an EU product, or contains ingredients from the EU, you can state as much in the description but must clearly state on the labelling that it was manufactured in the UK.

Example – 'Belgian chocolate - manufactured in the UK'

The qualifying statement does not have to be in the name of the food.

Colours

The colours used on the packaging can mislead as to the origin of the product, especially the colours of a national flag which will give the appearance that the product is from that country.

For example, a pizza box with a green, white and red vertical stripe design similar to the Italian flag or a box of chocolates with black, red and yellow horizontal stripes similar to the Belgium flag.

Images, shapes & symbols

Using the image/shape of something associated with a particular region or country can mislead as to the origin of the product, examples include:

- Maps and flags
- National landmarks
- National birds and animals

Certain products require mandatory origin statements, for example beef, minced meat, mixed fruit and vegetables, blended honey, olive oil etc; these were often described as 'origin – EU'.

From 1st January the goods cannot be describe as originating in the EU and will typically need to be described as 'Non-EU' or 'UK'.

Some goods (blended oils for example) require specific statements; please speak to your local Trading Standards department for advice.

You should do the following:

- Remove any reference to EU origin
- Ensure that the presentation of the product does not mislead as to the origin
- Correct any mandatory origin declarations with the appropriate statement
- Remove the EU Emblem



Loss of mutual recognition

The principle of mutual recognition states that any product that can legally be sold in one member state can be legally sold in all other member states, even if it does not comply with the local laws in those member states.

Mutual recognition does not normally apply for food because it only relates to non-harmonised laws, while food laws are often harmonised.

'Harmonised' means that the same rules apply in the same way across all member states of the EU, all the details are in EU Regulations that are made law in each member state.

However, some food laws are non-harmonised and so mutual recognition applies.

Non-harmonised food laws mostly come from EU Directives, which contain the general rules but each member state passes legislation with specific rules that apply in that member state; the member state will often take the opportunity to put in rules that were not in the Directive. This means that most member states have details in their food laws that are different to other member states.

Example:

The Cocoa and Chocolate Products (England) Regulations 2003 enacts the EU cocoa Directive and is a UK specific law.

The UK law states that chocolate made with milk replacement products can be

described as 'milk chocolate' despite not containing milk.

Other member states do not include this provision, however, the UK product can be sold in all other member states because mutual recognition makes it legal, despite not complying with the local laws.

From 1st January 2021 UK products will not be covered by mutual recognition.

Any UK product which relies on mutual recognition to be traded legally within the EU will likely be refused entry to the EU.

Any UK product previously relying on mutual recognition will need to comply with the law of the member state in which it is first placed on the community market (see 'Labelling in the correct language' above for an explanation). In the example above, the product cannot be legally sold in the EU after 1st January 2021.

The specific rules are likely to change from member state to member state so you will need to take advice on the legal requirements in the destination country.

It is unlikely that you will be able to identify whether you are relying on mutual recognition to trade your goods without an in depth understanding of the legislation; you may wish to take advice from your local Trading Standards department.

Further Advice

We would advise to start dialogue and conversations now (if you are not doing so already) with your suppliers and customers to find out their plans with a view to aligning yours, as this may help minimise disruption to your business.

If you need advice to get your goods ready, ask Trading Standards.

<https://mailchi.mp/kent.gov.uk/trading-standards-transition>

For further information, please see the links below:

- www.gov.uk/transition
- [Business Companion – Trading Standards law explained](#)
- [Preparing the food and drink sector for January 2021](#) – DEFRA
- [Guidance on health and identification marks that applies from 1 January 2021](#) - FSA

Act now to ensure you and your business are ready!