

## **FBO ADDRESSES FOR EXPORTS TO THE EU AFTER BREXIT – GUIDANCE FOR FDEA MEMBERS**

*The Q&A below is about FBO addresses on pre-packed foods exported into the EU. It is aimed at Food Business Operators in Great Britain and covers the position if we leave the EU:-*

- (a) without a withdrawal agreement in place; or*
- (b) having left with a deal, without a free trade agreement in place at the end of any transition period.*

*It also covers the likely position if a future trade agreement falls short of giving the UK full single market access (e.g. as a member of the European Free Trade Association).*

*The current deal envisages a transition period lasting until 31 December 2020; this can be extended by up to two years by agreement. During the transition period the UK will continue to operate as if it were a member state for trading purposes.*

### **Q 1: Which FBO's name and address must be on pre-packed food sold in the EU?**

If the food operator under whose name the product is marketed is not established in the EU, then the FBO that needs to be named is the importer of the food product<sup>1</sup>.

Pre-Brexit, you were a business 'established' in the EU. After Brexit that will not be the case unless you are set up there; instead, the name of an EU-based importer will need to be on the packaging. Under EU food law, it is this importer who is responsible for the correct labelling of the product and who will be first in the firing line for enforcement action if the information is not complete or correct.

### **Q2: Can the EU FBO's address be the address of one of our distributor's premises?**

If your business is not formally established in the EU, you must provide the address of the importer. That could, potentially, be your distributor.

It is worth keeping a key principle in mind; under EU food law the importer i.e. the party who first brings the product over the border into the EU, is primarily responsible for the food information on pre-packed food<sup>2</sup>. That is a responsibility that other players in the supply chain may not want unless, say, they have a contractual indemnity from you to cover incorrect or incomplete food information.

### **Q3: Can one importer address be used to cover all 27 of the EU's national markets?**

The short answer is yes. A food business operator established in the EU - whether a producer or an importer - can sell its pre-packed foods all over the EU (just as UK FBOs are able to now, pre-Brexit). In practice, depending on your markets and commercial arrangements, you may have multiple importers.

### **Q4: Can the FBO's address be a PO Box?**

FBOs must have an address where they can be reached by mail, so that e.g. consumers or enforcement authorities can contact them. A PO Box would satisfy that requirement. However, having a PO Box in the EU does not necessarily mean that you, as a UK business, are formally established there. That would need a physical presence of some kind.

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<sup>1</sup> See Article 8(1) and 9(1)(h) of Regulation (EU) No 1169/2011.

<sup>2</sup> Article 8(1) of Regulation (EU) No 1169/2011

**Q5: Can a UK company set up a company in one EU country and sell throughout the EU? What would the legal status of that registered company need to be?**

Yes, you could set up a subsidiary in a single EU country and that subsidiary could act as an importer of your product into the EU's single market. It could sell your/its products anywhere in the EU.

However, setting up in another country is not for the fainthearted. The new entity would need to be constituted and registered in accordance with the law of country where you set up. There could be a significant cost associated with that, and ongoing administration (e.g. filing of accounts and reporting), not to mention VAT and taxation implications.

**Q6: Does the address have to be an integral part of my packaging or can I over-sticker?**

In relation to prepacked food, the EU food regulation refers to mandatory information appearing "directly on the package or on a label" attached to it<sup>3</sup>. Labels must not be easily removable so as to jeopardise the availability of the information to the consumer.

Using overstickers will be acceptable so long as they cannot be peeled off easily.

**Q7: If my products arrive with my EU stockist just ahead of exit day, or the end of the transition period, will my current labels be sufficient?**

Stocks of food products already held in the EU on exit day or at the end of the transition period will not need to be re-labelled. Under EU law products must comply with EU food labelling law at the point they are placed on the market. Placing on the market includes holding finished stocks for future sale ("the holding of food for the purpose of sale"<sup>4</sup>).

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<sup>3</sup> See Article 8(7) of Regulation (EU) No 1169/2011.

<sup>4</sup> See Article 3(8) of Regulation (EC) No 178/2002.