

How Do We Go-It-Alone with Food & Drink Law?

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Brian Kelly
bkelly@cov.com

COVINGTON

BEIJING BRUSSELS LONDON LOS ANGELES NEW YORK SAN FRANCISCO
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Outline

- The “Brexit” referendum and possible timelines
- Current Position
- Post-Brexit “models”
- Model-specific implications for food law
- Next steps



The Referendum

- The referendum was **advisory**
- Notification of Article 50 of the Lisbon Treaty unlikely until next year
- Two-year notice period
 - UK must define terms of exit
 - UK may exit EU automatically after this period
- The tension between UK's desire to access to the EU internal market and controls of immigration and greater "sovereignty"
- EU concern about contagion

Current Position

- Business as usual from a legal/regulatory perspective
- EU law binding until moment of exit
 - Query appetite for Commission to take infraction proceedings against UK (e.g., traffic light scheme)
 - Likewise appetite of UK courts to refer matters of EU law to the EU Court of Justice
 - Existing referrals unaffected

Post-Brexit Models

- Dependent on the “exit” model
 - EEA Model
 - Non-EEA Model
- Tension between UK desire to participate in EU single market and conflicting desire to limit immigration
- Free movement of people could be a deal-breaker



EEA Model

- Norway, Iceland and Liechtenstein are European Economic Area (EEA) Member States, alongside the EU

- Participate fully in the EU internal market
 - Free movement of goods, services, capital and **persons**
 - Pay dues

- Very little influence
 - No MEPs
 - No vote in EU Council of the European Union
 - “Observer status” in EU procedures

Implications of the EEA Model for Food Law

- Unlikely to be a material change
- No transfer of legislative power but EEA Agreement requires implementation of bulk of EU food laws
 - Food – Chapter XII, Annex II
- EU-wide approval/notification measures (novel foods, health claims *etc.*) would continue to apply in the UK
 - Possible administrative approvals required e.g., for novel foods
- Reliance on EU principles of free movement and mutual recognition
- UK supply chain infrastructure largely unaffected, as are supplies to UK
- BUT
 - UK “observer status” means loss of influence in policy/legislation/regulation
 - Does not cover common agricultural/fishery policies

Non-EEA Model

- Various non-EEA models being discussed
 - “Swiss” model (a range of separately negotiated bilateral treaties with the EU; Switzerland has approximately 130 some of which require free movement of people);
 - the “Turkish” model (a customs union); and
 - the “default” model (the WTO/free trade approach, where the UK would simply be a third party with no preferential access to the EU market)
- UK would need to enter into free trade relations with the EEA and EU and negotiate bilateral agreements on a case-by-case basis
 - the WTO model in particular would presume a total separation of the UK systems for food/cosmetic regulation from the EU
 - Most Favoured Nation tariffs

Implications of Non-EEA Model for Food Law

- No obligation to implement new EU laws or maintain existing ones
- General perception that mandatory EU food law requirements relating to food production (traceability, hygiene, risk analysis, responsibilities and requirements for food business operators, precautionary approach, labelling...) are satisfactory so likely new UK laws would reflect these
- What about laws governing health claims (and nutrient profiles, botanicals...), and novel foods?
 - UK-only approach?
- Traditional/regional foods (Cornish pasties, Stilton cheese...)
- Codex Alimentarius

Summary

- We do not know whether UK will Brexit and outcome if it does

- Companies should begin planning:
 - Identify existing/pending/future applications or notifications for foods (e.g., novel foods, GM foods, health claims) that are managed by the UK
 - Check timing
 - Consider alternative Member State as rapporteur going forward

 - Labelling and establishment issues (EU food business operator)
 - Check shelf life since products may have long shelf-life

 - Are UK entities participants in an EEA supply chain (any other commercial/tax/IP considerations)

 - Consider establishing greater links in other EU Member States to better enable influence of EU laws

Thank You

Questions?

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