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for civil use” - REV1) dated
22 November 2019

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF EXPLOSIVES FOR CIVIL USE AND EXPLOSIVES PRECURSORS

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.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 certification by an EU notified body;
- ensure compliance with obligations for importers;
- ensure that transfers of explosives within the EU are approved by the competent authority in the Member State of the consignee;
- adapt product marking and labelling, where necessary; and
- ensure compliance with the prohibitions and restrictions on the marketing and use of explosives precursors by the general public.

Please note:

This notice does not address customs procedures for import or export. For these aspects, other notices are in preparation or have been published.⁵

In addition, attention is drawn to the more generic notice on prohibitions and restrictions, including import/export licences.

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, EU rules in the field of explosives for civil uses⁶ and EU rules in relation to explosives precursors⁷ ⁸ no longer apply to the United Kingdom.⁹ This has in particular the following consequences:

1. EXPLOSIVES FOR CIVIL USES

1.1. Obligations of importers, conformity assessment procedures and notified bodies

The *Notice to stakeholders – Withdrawal of the United Kingdom and EU rules in the field of industrial products*¹⁰ is also relevant for the EU rules on

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

⁶ Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses, OJ L 96, 29.3.2014, p. 1.

⁷ Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors, OJ L 39, 9.2.2013, p. 1.

⁸ As of 1 February 2021, Regulation (EU) 2019/1148 on the marketing and use of explosives precursors will apply and replaces Regulation (EU) No 98/2013, cf. Regulation (EU) 2019/1148 of the European Parliament and of the Council of 20 June 2019 on the marketing and use of explosives precursors, OJ L 186, 11.7.2019, p. 1.

⁹ Regarding the applicability of this legislation to Northern Ireland, see Part C of this notice.

¹⁰ https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_industrial_products.pdf

explosives for civil uses. This holds in particular for the requirement to hold a certificate issued by an EU notified body after the end of the transition period and for the identification of economic operators. An economic operator established in the EU receiving explosives for civil uses from the United Kingdom who, prior to the end of the transition period, was considered an EU distributor will become an importer for the purpose of Directive 2014/28/EU..

1.2. Marking of explosives for civil uses

According to Article 3(1) of Commission Directive 2008/43/EC setting up a system for the identification and traceability of explosives for civil uses,¹¹ applicable by virtue of Article 51(3) of Directive 2014/28/EU, explosives manufactured or imported are to be marked with a unique identification. According to the second subparagraph of Article 3(5) of Directive 2008/43/EC, where a manufacturing site is located outside the EU and the manufacturer is not established in the EU, the importer is to contact the Member State of import in order for the manufacturing site to be attributed a code.

After the end of the transition period, manufacturing sites in the United Kingdom will be identified as located outside the Union and will require a code to be attributed by the national authority of the EU Member State of import.

According to Article 3(2) of Directive 2008/43/EC, where explosives for civil uses are manufactured in the EU for export, a unique identification mark is not required if the importing third country requires an identification which allows traceability of the explosives. The question whether, after the end of the transition period, this exception applies for explosives for civil uses manufactured in the EU for export to the United Kingdom will depend on whether the United Kingdom will have, after the end of the transition period, national identification requirements in place.

1.3. Transfers of explosives for civil uses

According to Article 11(2) of Directive 2014/28/EU, transfers¹² of explosives are to be approved by the competent authority in the Member State of the consignee.

After the end of the transition period, a shipment of explosives for civil uses to, from and through the United Kingdom is no longer an intra-EU transfer. Rather, these shipments will be imports and exports respectively.

Approvals for transfers granted by the competent authority of the United Kingdom under Article 11(2) of Directive 2014/28/EU before the end of the transition period are no longer valid after the end of the transition period.

¹¹ OJ L 94, 5.4.2008, p. 8.

¹² Transfers are physical movements of explosives within the Union, cf. Article 2(6) of Directive 2014/28/EU.

2. EXPLOSIVES PRECURSORS

2.1. Prohibition to import by the general public: licences

After the end of the transition period, the introduction by members of the general public of certain explosives precursors from the United Kingdom to the EU is prohibited and only allowed under certain circumstances as laid down in Regulation (EU) No 98/2013 and, as of 1 February 2021, Regulation (EU) 2019/1148.

That Regulation continues to prohibit the introduction, possession or use of certain explosives precursors by the general public. If the national law of a Member State so provides, a member of the general public can apply for a licence pursuant to Article 6(1) of Regulation (EU) 2019/1148 for acquiring, introducing, possessing or using certain explosives precursors. The list of explosives precursors that are subject to these restrictions can be found in Annex I to the Regulation. A Member State may recognise licences issued by other Member States.¹³

These restrictions only apply to a member of the general public, which means any natural or legal person who is acting for purposes not connected with that person's trade, business, or profession. The prohibition of importing explosives precursors therefore does not apply to professional users and economic operators.

2.2. Obligations on economic operators and online marketplaces

Regulation (EU) No 98/2013 sets out several obligations on economic operators, including the duty to detect and report suspicious transactions of explosives precursors. The obligation to detect and report suspicious transactions of explosives precursors remains under Regulation (EU) 2019/1148, and is explicitly extended to online marketplaces as well.¹⁴

Insofar as UK-based economic operators make available regulated explosives precursors in the EU, and insofar as online marketplaces provide services to make available regulated explosives precursors in the EU, they are bound by these rules as well. The Commission has adopted guidelines¹⁵ to facilitate the implementation of Regulation (EU) 2019/1148.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

1. EXPLOSIVES FOR CIVIL USE PLACED ON THE MARKET

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

¹³ Article 6(7) of Regulation (EU) 2019/1148.

¹⁴ Article 9(1) of Regulation (EU) 2019/1148.

¹⁵ Commission Notice – Guidelines for the implementation of Regulation (EU) 2019/1148 on the marketing and use explosives precursors C/2020/3756, OJ C 210, 24.6.2020, p. 63.

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.¹⁶

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.¹⁷ “Supply of a good for 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.”¹⁸

Example: An individual explosive for civil uses marked with a unique identification attributed by the national authority of the United Kingdom sold by the UK-based manufacturer to a UK-based wholesaler before the end of the transition period can still be sold into the EU after the end of the transition period without the need for re-labelling.

As regards on-site mixed explosives, the manufacturing end stage is only the moment of *in situ* production. Any explosives not already “produced *in situ*” before the end of the transition period therefore need to be assessed again by an EU Notified Body.

2. ONGOING MOVEMENTS OF EXPLOSIVES PRECURSORS

Article 47(1) of the Withdrawal Agreement provides that, under the conditions set out therein, movements of goods ongoing at the end of the transition period are to be treated as intra-Union movements regarding importation and exportation licencing requirements in EU law.

Example: A specific consignment of explosives precursors, the movement of which is ongoing between the EU and the United Kingdom at the end of the transition period can still enter the EU or the United Kingdom as if it was a movement between two Member States, i.e. not requiring introduction licence.

¹⁶ Article 42 of the Withdrawal Agreement.

¹⁷ Article 40(a) and (b) of the Withdrawal Agreement.

¹⁸ Article 40(c) of the Withdrawal Agreement.

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.¹⁹ 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.²⁰

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.²¹

The IE/Ni Protocol provides that Directive 2014/28/EU and Regulation (EU) 2019/1148 apply to and in the United Kingdom in respect of Northern Ireland.²²

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:

- Explosives for civil use placed on the market or used for their own purposes by manufacturers of Northern Ireland have to comply with the respective provisions of Directive 2014/28/EU;
- An explosive for civil uses/explosives precursor shipped to Northern Ireland from a third country or from Great Britain is an import/introduction for the purposes of Directive 2014/28/EU, Regulation (EU) No 98/2013, and Regulation (EU) 2019/114;
- An explosive for civil uses manufactured in Northern Ireland for export to Great Britain shall be marked with a unique identification, unless Great Britain requires an identification which allows traceability of the explosive as per Article 3(2) of Directive 2008/43/EC;
- The importer and the authorised representative may be established in Northern Ireland for the purposes of Directive 2014/28/EU;
- Where provisions of Union law require a unique code indicating a Member State, it is to be indicated as “UK(NI)”;²³

¹⁹ Article 185 of the Withdrawal Agreement.

²⁰ Article 18 of the IE/Ni Protocol.

²¹ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/Ni Protocol.

²² Article 5(4) of the IE/Ni Protocol and section 19 of annex 2 to that Protocol.

²³ Article 7(2) of the IE/Ni Protocol. Technical constraints, usually linked to databases, may require the country code to be limited to two digits. In this case, a non-attributed combination of digits should be used.

- Certificates of conformity issued by a Notified Body in the EU are valid in Northern Ireland.
- Certificates of conformity issued by a conformity assessment body in Great Britain are not valid in 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;²⁴
- 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;²⁵
- invoke the country of origin principle or mutual recognition for activities performed by authorities or bodies established in the United Kingdom.²⁶

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

- Certificates of conformity issued by Notified Bodies in Northern Ireland are valid only in Northern Ireland. These certificates and reports are not valid in the EU.²⁷ Where explosives for civil use are certified by a Notified Body in Northern Ireland, the indication “UK(NI)” must be affixed next to the “CE” marking.²⁸ This distinct marking allows the identification of explosives for civil use which can be legally placed on the market in Northern Ireland, but not in the EU.
- a licence under Article 6(1) of Regulation (EU) 2019/1148 issued by the United Kingdom in respect of Northern Ireland is not recognised in an EU Member State.

The website of the Commission on the EU legislation on explosives for civil uses (https://ec.europa.eu/growth/sectors/chemicals/legislation_en#explosives) and explosives precursors (https://ec.europa.eu/home-affairs/what-we-do/policies/counter-terrorism/protection/implementation-explosives-precursors-legislation_en) provide for general information. These pages will be updated with further information, where necessary.

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²⁴ 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.

²⁵ Fifth subparagraph of Article 7(3) of the IE/Ni Protocol.

²⁶ First subparagraph of Article 7(3) of the IE/Ni Protocol.

²⁷ Fourth subparagraph of Article 7(3) of the IE/Ni Protocol.

²⁸ Fourth subparagraph of Article 7(3) of the IE/Ni Protocol.