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dated 8 November 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF TRANSBOUNDARY SHIPMENTS OF WASTE

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that date, EU law in its entirety applies to and in the United Kingdom.⁴

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,⁵ 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 to Northern Ireland after the end of the transition period (Part C below).

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 The transition period may, before 1 July 2020, be extended once for up to 1 or 2 years (Article 132(1) of the Withdrawal Agreement). The UK government has so far ruled out such an extension.

⁴ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

⁵ 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.

Advice to stakeholders: To address the consequences set out in this notice, stakeholders are in particular advised to consider waste streams currently destined for disposal in the United Kingdom and adapt them in light of this notice.

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.⁶

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 law on transboundary shipments of waste, in particular Regulation (EC) No 1013/2006 on shipments of waste, no longer apply to the United Kingdom.⁷ Further, related provisions in other waste legislation on EU level are affected. This has in particular the following consequences:

1. TRANSBOUNDARY SHIPMENTS OF WASTE

1.1. Prohibitions of waste shipments

Articles 34 and 3(5) of Regulation (EC) No 1013/2006 on shipments of waste⁸ prohibit the export of

- waste for disposal; and
- mixed municipal waste⁹ for recovery operations

from the EU to a third country, unless it is a member of the European Free Trade Association (EFTA) and a party to the Basel Convention. Consequently, as of the end of the transition period all exports of waste for disposal and the export of mixed municipal waste for recovery from the EU to the United Kingdom will be prohibited.

Imports of waste into the EU will be governed, as of the end of the transition period, by Title V of Regulation (EC) No 1013/2006, whereby imports of

⁶ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

⁷ Regarding the applicability of Regulation (EC) No 1013/2006 in Northern Ireland, see Part C of this notice.

⁸ OJ L 190, 12.7.2006, p. 1.

⁹ Mixed municipal waste (waste entry 20 03 01 in accordance with the Commission Decision 2000/532/EC on the list of waste, OJ L 226, 6.9.2000, p. 3) collected from private households, including where such collection also covers such waste from other producers.

waste from a third country party to the Basel Convention remains allowed, subject to the requirements set out in that Regulation.

1.2. Consents issued prior to the end of the transition period

Article 9 of Regulation (EC) No 1013/2006 requires the "consent" by the competent authorities of destination, dispatch and transit of notified waste shipments.

With the exception of individual movements of waste which are ongoing at the end of the transition period¹⁰, for consents issued by competent authorities of Member States of the EU prior to the end of the transition period, for shipments after the end of the transition period, the following applies:

- Where the shipment is prohibited under Regulation (EC) No 1013/2006, the consent becomes void.
- Where shipments are not per se prohibited, the change of the status of the United Kingdom from a Member State to a third country is an essential change under Article 17 of Regulation (EC) No 1013/2006. In accordance with Article 17(2) of Regulation (EC) No 1013/2006, in case of such an essential change, a new notification is to be submitted, unless all the competent authorities concerned consider that the proposed changes do not require a new notification.

Even if all competent authorities concerned consider that a new notification is not required, it is recalled that the requirements for waste shipments between the EU and the United Kingdom - which remains a Party to the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous waste and their disposal, as well as an "OECD-Decision country"¹¹ - will be subject to the conditions set out in Articles 38(3)(a),(b),(c) and (e) and 42(3)(b),(c) and (d) of Regulation (EC) No 1013/2006 which may require inter alia:

- The competent authorities concerned to send a stamped copy of their decisions to consent to the relevant customs offices (e.g. customs offices of exit or entry);
- The carrier to deliver a copy of the movement document to the relevant Union customs offices (e.g. customs offices of exit or entry);
- The relevant Union customs offices to send where applicable a stamped copy of the movement document to the competent authority of dispatch, transit and destination in the Union stating that the waste has either left or entered the Union;

¹⁰ See Section B for these cases.

¹¹ I.e. a country to which Decision C(2001)107/FINAL of the OECD Council applies, see Article 2(17) of Regulation (EC) No 1013/2006.

- In case of an export from the Union, for the contract associated with the notification to stipulate certain obligations for the consignee of the waste and for the treatment facility.

In addition, the notification will have to contain information of the customs offices of entry and exit.¹²

2. EU WASTE MANAGEMENT TARGETS AND RECOVERY OPERATIONS IN THIRD COUNTRIES

Where recovery of waste generated in the EU Member States takes place outside the EU, Member States can count that waste towards the fulfilment of their EU waste management targets depending on the treatment conditions outside the EU. In particular

- Exports of waste electrical and electronic equipment for treatment in the United Kingdom will be counted towards the waste management targets of Directive 2012/19/EC on waste electrical and electronic equipment¹³ if there is sound evidence that the treatment of that waste in the United Kingdom takes place in conditions that are equivalent to the requirements of that Directive.¹⁴
- Exports of waste batteries and accumulators for treatment in the United Kingdom will be counted towards the waste management targets of Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators¹⁵ if there is sound evidence that the treatment of that waste in the United Kingdom takes place in conditions that are equivalent to the requirements of that Directive.¹⁶
- Exports of municipal waste for preparation for reuse and recycling, and exports of construction and demolition waste for preparation for reuse, recycling and other material recovery in the United Kingdom will be counted towards the waste management targets of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste¹⁷ if there is sound evidence showing compliance of the shipment with the provisions of Regulation (EC) No 1013/2006 of the European Parliament and of the Council¹⁸, and in particular Article 49(2) thereof.¹⁹

¹² "Block 16" of the notification document. See Annex 1A and point 44 of annex 1C of Regulation (EC) No 1013/2006.

¹³ OJ L 197, 24.7.2012, p. 38.

¹⁴ Article 10(2) of Directive 2012/19/EC.

¹⁵ OJ L 266, 26.9.2006, p. 1.

¹⁶ Article 15(2) of Directive 2006/66/EC.

¹⁷ OJ L 312, 22.11.2008, p. 3.

¹⁸ OJ L 190 12.7.2006, p. 1.

- Exports of packaging and packaging waste can be counted towards the waste management targets of the European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste²⁰ if there is sound evidence that the recovery and/or recycling in the United Kingdom takes place under conditions that are broadly equivalent to those prescribed by the Union legislation on the matter²¹, including the provisions of Regulation (EC) No 1013/2006 of the European Parliament and of the Council²², and in particular Article 49(2) thereof.
- Exports of end-of life vehicles can be counted towards the waste management targets of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles²⁰ if there is sound evidence that the recovery and/or recycling in the United Kingdom takes place under conditions that are broadly equivalent to those prescribed by the Union legislation on the matter²³, including Regulation (EC) No 1013/2006 of the European Parliament and of the Council²⁴, and in particular Article 49(2) thereof.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

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 waste, 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 on the basis of a notification document on which the competent authorities of dispatch, transit and destination have given their consent.

¹⁹ Article 2(5) of Commission Decision 2011/753/EU of 18 November 2011 establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of Directive 2008/98/EC of the European Parliament and of the Council, OJ L 310, 25.11.2011, p. 11.

²⁰ OJ L 365, 31.12.1994, p. 10.

²¹ Article 4(1) of Commission Decision 2005/270/EC establishing the formats relating to the database system pursuant to Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste, OJ L 86, 5.4.2005, p. 6.

²² OJ L 190 12.7.2006, p. 1.

²³ Article 2(1) of Commission Decision 2005/293/EC of 1 April 2005 laying down detailed rules on the monitoring of the reuse/recovery and reuse/recycling targets set out in Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles, OJ L 94, 13.4.2005, p. 30.

²⁴ OJ L 190 12.7.2006, p. 1.

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.²⁵ 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.²⁶

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.²⁷

The IE/Ni Protocol provides that Regulation (EC) No 1013/2006 applies to and in the United Kingdom in respect of Northern Ireland.²⁸

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, subject to Article 6(1) of the IE/Ni Protocol. According to Article 6(1), provisions of Union law made applicable by the Protocol which prohibit or restrict the exportation of goods shall only be applied to trade between Northern Ireland and other parts of the United Kingdom to the extent strictly required by any international obligations of the Union.

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

- The import of waste from Great Britain or third countries into Northern Ireland will be governed by Title V of Regulation (EC) No 1013/2006, whereby imports of waste remain allowed, subject to the requirements set out in that Regulation;
- The export of waste for disposal and of mixed municipal waste from Northern Ireland to Great Britain will be subject to the prior informed consent procedure;
- The export of waste for disposal and of mixed municipal waste from Northern Ireland to third countries (except for EFTA countries) will remain prohibited;
- The export of waste for disposal and of mixed municipal waste from Northern Ireland to EFTA countries will remain allowed, subject to the prior informed consent procedure²⁹;
- The export of hazardous waste from Northern Ireland to Great Britain and to third countries, which are OECD members, will be subject to the procedure of written notification and consent;³⁰

²⁵ Article 185 of the Withdrawal Agreement.

²⁶ Article 18 of the IE/Ni Protocol.

²⁷ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/Ni Protocol.

²⁸ Article 5(4) of the IE/Ni Protocol and section 25 of annex 2 to that Protocol.

²⁹ Pursuant to Articles 34, 35 and 3 of Regulation 1013/2006.

- The export of hazardous waste from Northern Ireland to non-OECD members will remain prohibited.³¹

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.³²

The website of the Commission on waste policy (<http://ec.europa.eu/environment/waste/index.htm>) provides general information concerning shipments of waste and the management of specific waste streams. These pages will be updated with further information, where necessary.

European Commission
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³⁰ Pursuant to Articles 38 and 3 of Regulation 1013/2006.

³¹ Pursuant to Articles 36 of Regulation 1013/2006.

³² 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.