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21 March 2019

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF DUAL-USE EXPORT CONTROLS

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.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.

In any case, 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, persons trading dual-use items 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.

- take note that shipments of listed dual-use items from the EU to the United Kingdom will be subject to an authorization requirement under Regulation (EC) No 428/2009 after the end of the transition period;
- no longer rely on licences from the United Kingdom for shipments from the EU to a third country;
- no longer rely on licenses issued by the relevant licensing authority in a Member State for export of items located in the United Kingdom to another third country after the end of the transition period; and
- seek further information from their competent licensing authority⁵ regarding the handling of relevant export scenarios from the customs territory of the EU to the United Kingdom taking place after the end of the transition period.

Please note:

This notice does not address:

- EU rules on customs procedures;
- other, non dual-use related, export controls

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, Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items⁷ no longer apply to the United Kingdom.⁸ This has in particular the following consequences:

1. DUAL-USE EXPORTS TO THE UNITED KINGDOM

Regulation (EC) No 428/2009 provides for the control of the export, brokering and transit of dual-use items. After the end of the transition period, controls under

⁵ A list of the competent licensing authorities in the EU can be found at <https://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/>.

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

⁷ OJ L 134, 29.5.2009, p. 1.

⁸ Regarding the applicability of Regulation (EC) No 428/2009 to Northern Ireland, see Part C of this notice.

Regulation (EC) No 428/2009 will apply in relation to exports to the United Kingdom.

2. EXPORT LICENSES ISSUED BY THE UNITED KINGDOM UNDER REGULATION (EC) No 428/2009

Export licences issued by the United Kingdom under Regulation (EC) No 428/2009 are no longer valid for exports of dual-use items from the EU to third countries after the end of transition period. Rather, such exports of dual-use items from the EU to third countries will require a licence issued by the competent authority in the relevant EU Member State, in accordance with Article 9 of Regulation (EC) No 428/2009.

3. INTRA-EU TRANSFER LICENCES TO THE UNITED KINGDOM ISSUED BEFORE THE END OF THE TRANSITION PERIOD

According to Article 22 of Regulation (EC) No 428/2009, certain very sensitive dual-use items, listed in Annex IV to that Regulation, are subject to intra-EU transfer controls. After the end of the transition period, former transfers of Annex IV items from the EU to the United Kingdom will constitute an export subject to authorisation under the terms and conditions of Regulation (EC) No 428/2009.

However, intra-EU transfer licences issued by the competent authority of an EU Member States for transfers to the United Kingdom issued before the end of the transition period will become valid licences for exports to the United Kingdom after the end of the transition period, and until the validity of the licence expires.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

1. ONGOING MOVEMENTS OF DUAL USE ITEMS

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 dual-use item, 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 the rules in Regulation (EC) No 428/2009 applicable to transfers.

2. SPECIAL FISSILE MATERIALS (ARTICLE 86 OF THE EURATOM TREATY) PRESENT ON THE TERRITORY OF THE UNITED KINGDOM AT THE END OF THE TRANSITION PERIOD

According to Article 83(1),(2) of the Withdrawal Agreement, special fissile material (i.e. material property of the Community according to Article 86 of the Euratom Treaty) which is present on the territory of the United Kingdom at the end of the

transition period becomes the property of the persons or undertakings that had unlimited right of use and consumption at the end of the transition period.⁹

According to Article 83(3)(d) of the Withdrawal Agreement, where this right is with a Member State, or a person or undertaking established in a Member State, the export of this materials to a third country is to be authorised in accordance with Regulation (EC) No 428/2009.

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.¹⁰ 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.¹¹

The IE/Ni Protocol makes certain provisions of EU law applicable to Northern Ireland. In the IE/Ni Protocol, the EU and the United Kingdom have agreed that Northern Ireland is treated as if it were a Member State with regard to certain legislation.¹²

The IE/Ni Protocol provides that Regulation (EC) No 428/2009 applies to and in the United Kingdom in respect of Northern Ireland.¹³

This means that references to the EU in Parts A and B of this notice have to be understood as including Northern Ireland.

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

- Shipments of dual-use items from the EU to Northern Ireland, and *vice-versa*, are intra-EU transfers for the purpose of Regulation (EC) No 428/2009;
- Shipments of dual-use items from Northern Ireland to a third country or to Great Britain are exports for the purpose of Regulation (EC) No 428/2009. In that case, the UK designated authority is to act as competent authority for the purpose of the application of Regulation (EC) No 428/2009.¹⁴

⁹ The notion of “property” in Article 86 of the Euratom Treaty is not to be confused with the concept of “property” in civil law (“*sui generis*” Euratom ownership of Special Fissile materials in the Euratom Community).

¹⁰ Article 185 of the Withdrawal Agreement.

¹¹ Article 18 of the IE/Ni Protocol.

¹² Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/Ni Protocol.

¹³ Article 5(4) of the IE/Ni Protocol and section 47 of annex 2 to that Protocol.

¹⁴ The obligation in Regulation (EC) No 428/2009 is required by international obligations of the Union (1985 Australia Group, 1996 Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, 1974 Nuclear Suppliers Group, 1987 Missile Technology Control Regime, 1972 Biological Weapons Convention, 1993 Chemical Weapons Convention, 1968 Treaty on the Non-Proliferation of Nuclear Weapons, cf. Article 6(1) of the IE/Ni Protocol.

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;¹⁵
- invoke mutual recognition of assessments and authorisations by the United Kingdom in respect of Northern Ireland.¹⁶

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

- any authorisation issued by the United Kingdom in respect of Northern Ireland under Regulation (EC) No 428/2009 cannot be invoked for shipments of dual use items from a Member State to a third country.

The website of the Commission (<http://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/>) provides general information concerning dual-use export control. These pages will be updated with further information, where necessary.

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¹⁵ 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.

¹⁶ First subparagraph of Article 7(3) of the IE/Ni Protocol.