



Brussels, 28 March 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND THE EURATOM *ACQUIS*

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, unless a ratified withdrawal agreement¹ establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').² The United Kingdom will then become a 'third country'.³

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement and related repercussions, stakeholders engaged in the nuclear field are reminded of legal repercussions which need to be considered when the United Kingdom becomes a third country.^{4 5}

Subject to any transitional arrangement that may form part of a possible withdrawal agreement, as of the withdrawal date, the overall set of Euratom provisions (i.e. the Euratom *acquis*) no longer applies to the United Kingdom. This has, in particular, the following consequences:⁶

¹ Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

² Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

³ A third country is a country not member of the EU.

⁴ For certain Euratom-related matters, the EU is trying to agree solutions with the United Kingdom in the withdrawal agreement. The essential principles of the EU/Euratom's position on nuclear materials and safeguard equipment (Euratom) are available here: https://ec.europa.eu/commission/publications/position-paper-nuclear-materials-and-safeguard-equipment-euratom_en.

⁵ This notice does not address rules based on the Treaty on the Functioning of the European Union (TFEU).

⁶ Although not being Euratom *acquis*, it is recalled that nuclear materials, facilities, technologies and equipment fall within the scope of Council Regulation No 428/2009, of 5 May 2009, setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. For more details, see the "Notice to stakeholders - Withdrawal of the United Kingdom and EU rules in the

1. COMMON SUPPLY POLICY

Chapter 6 of the Euratom Treaty provides that the supply of ores, source materials and special fissile materials be ensured by means of a common supply policy on the principle of equal access to sources of supply. To this end the Euratom Supply Agency (ESA) has the exclusive right to conclude contracts relating to the supply (imports, exports, and supply within the Community) of ores, source materials and special fissile materials. The statutes of ESA provide that this exclusive right is exercised by the co-signature of ESA to all contracts between parties for relevant material. In specific cases a separate authorisation may be required from the Commission before the ESA co-signs the contract.

As from the withdrawal date, the United Kingdom will cease to participate in the common supply policy. Consequently, as from the withdrawal date, the co-signature by ESA of contracts pertaining to the supply of nuclear materials (and, where applicable, the Commission authorisation for such contracts) in connection with the United Kingdom, will cease to have effect.

As from the withdrawal date, ESA and, where relevant, the Commission, will have to take account of the fact that materials transferred to the United Kingdom will no longer contribute to the Community's security of supply and reach an assessment of the United Kingdom's safeguards regime before its co-signature and, where relevant, authorisation can be given in relation to the aforementioned contracts.

This is without prejudice to the other elements of the contracts which are a matter for the parties to assess.

2. EXPORTS

2.1. Authorisation to dispose production outside the Community

In accordance with Article 59 of the Euratom Treaty, the "conclusion" (co-signature by ESA) of contracts pertaining to the export of EU-produced nuclear materials towards a third country needs to be authorised by the Commission. Such authorisation may not be granted if the recipients of the supplies fail to satisfy the requirement that the general interests of the Community are safeguarded or in the event the terms and conditions of the contracts in question are contrary to the Euratom Treaty.⁷

As from the withdrawal date, this requirement will apply to exports from the EU-27 to the United Kingdom.

field of import/export licences for certain goods" (https://ec.europa.eu/info/brexit/brexit-preparedness_en).

⁷ The Commission authorisation will not be granted if the export of EU-produced nuclear materials towards a third country risks to jeopardise the security of supply, in the medium term, of such materials for EU users, or if the contracts concerned are likely to put at risk the EU nuclear non-proliferation objective.

2.2. Consent of third parties and other special procedures

Euratom has concluded several Nuclear Cooperation Agreements⁸ with third countries. Currently, under these agreements nuclear items (including nuclear materials, equipment and other items usually foreseen in such agreements) can be transferred within the nuclear common market on the territory of the Euratom Community (including to and from UK) without being submitted to a special procedure⁹ and/or the prior consent of the Third Country concerned.

As of the withdrawal date, the United Kingdom will be neither part of the common nuclear market, nor will it be covered by these agreements. As a consequence, exports and imports of nuclear items, to and from the United Kingdom, may require a special procedure and/or the prior consent of the Third Country concerned.

3. BASIC SAFETY STANDARDS DIRECTIVE¹⁰

Council Directive 2013/59/Euratom¹¹ – the Euratom Basic Safety Standards Directive – applies, inter alia, to the import to and export from the Community of radioactive material (see Article 2(2) a of Council Directive 2013/59/Euratom). As of the withdrawal date, any import of radioactive material from the United Kingdom to the Community and any export of radioactive material from the Community to the United Kingdom will need to comply with the requirements in this Directive. In particular:

- Article 20 of Council Directive 2013/59/Euratom defines specific requirements on undertakings intending to import a consumer product; Article 21 lists products

⁸ Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for cooperation in the peaceful uses of nuclear energy, OJ L 29, 1.2.2012, p. 4; Agreement between the Government of Japan and the European Atomic Energy Community for co-operation in the peaceful uses of nuclear energy, OJ L 32, 6.2.2007, p. 65; Agreement for cooperation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the United States of America, OJ L 120, 20.5. 1996; Accord de coopération entre la Communauté européenne de l'énergie atomique (Euratom) et le gouvernement du Canada concernant les utilisations pacifiques de l'énergie atomique, OJ L 60, 24.11.1959; Agreement between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine for Co-operation in the Peaceful Uses of Nuclear Energy, OJ L 261, 22.9.2006; Agreement for co-operation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the Government of the Republic of Kazakhstan, OJ L 10, 15.1.2009; Agreement for cooperation in the peaceful uses of nuclear energy between the European Atomic Energy Community (Euratom) and the Government of the Republic of Uzbekistan, OJ L 269, 21.10.2010, p. 9.

⁹ This means for instance that the Supplier State would have to obtain formal governmental assurances from the Recipient State with regard to the peaceful uses of these items and in line with the provisions of the Nuclear Suppliers Group Guidelines for Nuclear Transfers (INFCIRC 254, as revised).

¹⁰ For goods (including goods falling within the scope of the Euratom *acquis*) placed on the EU market *before* the withdrawal date, the EU is trying to agree solutions with the United Kingdom in the withdrawal agreement. The essential principles of the EU's position on goods placed on the market under Union law before the withdrawal date are available here: https://ec.europa.eu/commission/publications/position-paper-goods-placed-market-under-union-law-withdrawal-date_en. Please note that the essential principles of the EU's position on goods build on one single definition of "placing on the market" ("first making available on the market").

¹¹ Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, OJ L 13, 17.01.2014, p.1.

for which import and export are prohibited. In addition, the import of consumer products from third countries is subject to regulatory control and requires notification and licensing (Articles 25 and 28).

- Article 75 of Council Directive 2013/59/Euratom contains specific provisions on building materials which need to be complied with before such materials can be placed on the market in the Community.¹²
- Article 93 of Council Directive 2013/59/Euratom obliges Member States to encourage the establishment of systems to detect the presence of radioactive contamination in metal products imported from third countries.

4. RADIOACTIVE WASTE DIRECTIVE¹³

Council Directive 2011/70/Euratom establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste¹⁴ sets rules for shipments of radioactive waste from a Member State to a third country with the aim of disposal. As of the withdrawal date, these rules apply for shipments from the EU-27 to the United Kingdom. According to Article 4(4), second subparagraph of Council Directive 2011/70/Euratom these rules include:

- an obligation to inform the Commission prior to shipment to a third country;
- the obligation that the Member States in question needs to have in place an agreement with the third country to use a disposal facility;
- the requirement that the disposal facility needs to be authorised and operating.

5. OTHER ISSUES

As of the withdrawal date, the freedoms guaranteed under the Euratom Treaty, including the free movement of goods and products¹⁵, of skilled staff, or of natural or legal persons wishing to participate in the construction of nuclear installations, will cease to apply in the relations between the United Kingdom and the EU-27.

¹² "Building materials" under Council Directive 2013/59 are "construction products" as defined in Regulation (EU) No 305/2011 on harmonised conditions for the marketing of construction products. Articles 13 and 2(21) of Regulation (EU) No 305/2011 lay down specific procedural obligations on importers that have to be fulfilled when placing a construction product from a third country on the Union market. Consequently, when placing on the market building materials imported from the UK, the importers will have to demonstrate the compliance with Article 75 of Directive 2013/59 by following the imports-specific procedure defined in Article 13 of Regulation (EU) No 305/2011, (cf. recitals 17 – 21 of Directive 2013/59).

¹³ For a movement of goods that has started before and ends on or after the withdrawal date, ("sailing goods"), the EU is trying to agree solutions with the United Kingdom in the withdrawal agreement. The essential principles of the EU's position on Customs related matters needed for an orderly withdrawal of the UK from the Union are available here: https://ec.europa.eu/commission/publications/position-paper-customs-related-matters-needed-orderly-withdrawal-uk-union_en.

¹⁴ Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste (OJ L 199, 2. 8. 2011, p. 48).

¹⁵ As specified by Annex IV to the Euratom Treaty.

The website of the Commission on nuclear energy (<https://ec.europa.eu/energy/en/topics/nuclear-energy>) provides more general information. These pages will be updated with further information, where necessary.

European Commission
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