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Guidelines on Trading with the European Union (EU)

**A practical guide for Kimberley Process Participants and companies involved in trade in
rough diamonds with the EU**

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Disclaimer

This document is provided as a service to interested parties. It is non-binding guidance and does not represent the official view of the European Union, nor should it be taken as legal advice.

For more information:

EU and Kimberley Process: https://ec.europa.eu/fpi/what-we-do/kimberley-process-fight-against-%E2%80%98conflict-diamonds%E2%80%99_en

Kimberley Process website: <http://www.kimberleyprocess.com>

1. Introduction

The purpose of these guidelines is to provide a practical guide for Kimberley Process Participants and companies involved in trade in rough diamonds with the EU.

The Kimberley Process (KP) is a multilateral trade regime established in 2003 with the goal of preventing the flow of conflict diamonds. The core of this regime is the Kimberley Process Certification Scheme (KPCS) under which States implement safeguards on shipments of rough diamonds and certify them as “conflict free”. For more information visit <https://www.kimberleyprocess.com/>.

The European Union (EU) as a whole is a single Participant in the KPCS, and Council Regulation (EC) 2368/2002¹ implementing the KPCS for the international trade in rough diamonds applies common rules in all Member States.

Applicable legal texts can be found here: <http://eur-lex.europa.eu/>

The EU comprises 27 Member States. For most international trade matters, including for the purposes of the Kimberley Process Certification Scheme (KPCS), the territory of the EU and that of Greenland shall be considered as one entity without internal borders.

One set of rules applies for the twenty-seven Member States for import or export transactions at the external borders of the single market.

Rough diamonds may legally be exported to or imported from any of the 27 Member States which, at 1 February 2020, are the following:

Austria	Estonia	Italy	Portugal
Belgium	Finland	Latvia	Romania
Bulgaria	France	Lithuania	Slovakia
Croatia	Germany	Luxembourg	Slovenia
Cyprus	Greece	Malta	Spain
Czech Republic	Hungary	Netherlands	Sweden
Denmark	Ireland	Poland	

Withdrawal of the United Kingdom from the EU

At the Kimberley Process Plenary in November 2019, New Delhi, the Plenary adopted an Administrative Decision on the Admission of the United Kingdom of Great Britain and Northern Ireland to the Kimberley Process Certification Scheme.

The admission of the United Kingdom as a KPCS Participant, will take effect from the date on which EU law ceases to apply to and in the United Kingdom, i.e. at the end of the transition period.

¹ COUNCIL REGULATION (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds (OJ L 358 31.12.2002, p. 28)

During the transition period, the United Kingdom is treated as a Member State of the EU for the purposes of the KPCS. The transition period starts on 1 February 2020 and ends on 31 December 2020.

For information please see **‘Withdrawal of the United Kingdom and EU rules in the field of prohibitions and restrictions of imports and exports, in particular import/export licenses’** available here:

https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/import_and_export_licences_en.pdf

2. Imports of rough diamonds into the EU

- Council Regulation (EC) No 2368/2002 specifies the applicable rules as follows:

Article 3 provides: The import of rough diamonds into the Union shall be prohibited unless all of the following conditions are fulfilled:

- (a) the rough diamonds are accompanied by a certificate validated by the competent authority of a participant [*i.e. of the Kimberley Process*];
- (b) the rough diamonds are contained in tamper-resistant containers, and the seals applied at export by that participant are not broken;
- (c) the certificate clearly identifies the consignment to which it refers.

- For the import of rough diamonds, importers or economic operators can freely choose a point of entry at any external border of the EU for the import of rough diamonds.
- However, every import of rough diamonds must first be verified by a **Union authority**.

A Union authority is a competent authority designated by a Member State and agreed by the Commission to fulfill certain tasks in connection with the implementation of the KPCS, namely the verification of incoming shipments and KP certificates for conformity with KP rules and the issuance of EU KP Certificates for export shipments.

- There are currently Union authorities² in:
 - Antwerp (Belgium),
 - Prague (Czech Republic),
 - Idar-Oberstein (Germany),
 - Dublin (Ireland)
 - Lisbon (Portugal)
 - Bucharest (Romania)
 - London³ (United Kingdom).
- Acceptance of a customs declaration for release for free circulation of rough diamonds pursuant to Council Regulation (EU) No 952/2013⁴ can only happen after the containers and certificates had been verified by a Union authority.
- Importers should contact the Union authority they wish to rely on in the first instance, which will provide further details, if necessary. Importers are free to choose the point of entry to the EU, within the limits set out below. Importers are responsible for the proper movement of the rough diamonds within the EU and the costs thereof.

² The Union authority in Sofia (Bulgaria) ceased its activity as of 26 January 2016. See Commission Implementing Regulation (EC) 2016/91 of 26 January 2016 amending Council Regulation (EC) No 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds

³ Until the end of the transition period, see details on the withdrawal of the United Kingdom from the EU under point 1 above.

⁴ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1–101

- Union authorities verify if the content of a container matches the particulars on the corresponding certificate.
- Contact details are provided in Section 10 of this document and are available in Annex III of Council Regulation (EC) No 2368/2002.
- **If there is a Union authority in either**
 - **the Member State where the rough diamonds are imported, or**
 - **the Member State for which the rough diamonds are destined**the container(s) and certificate(s) should be submitted for verification, together and at the earliest opportunity, to the Union authority in either the importing or the destination Member State, as applicable.
- **If the above does not apply**, then the importer can chose which Union authority it will submit the shipment and certificate to, for verification.

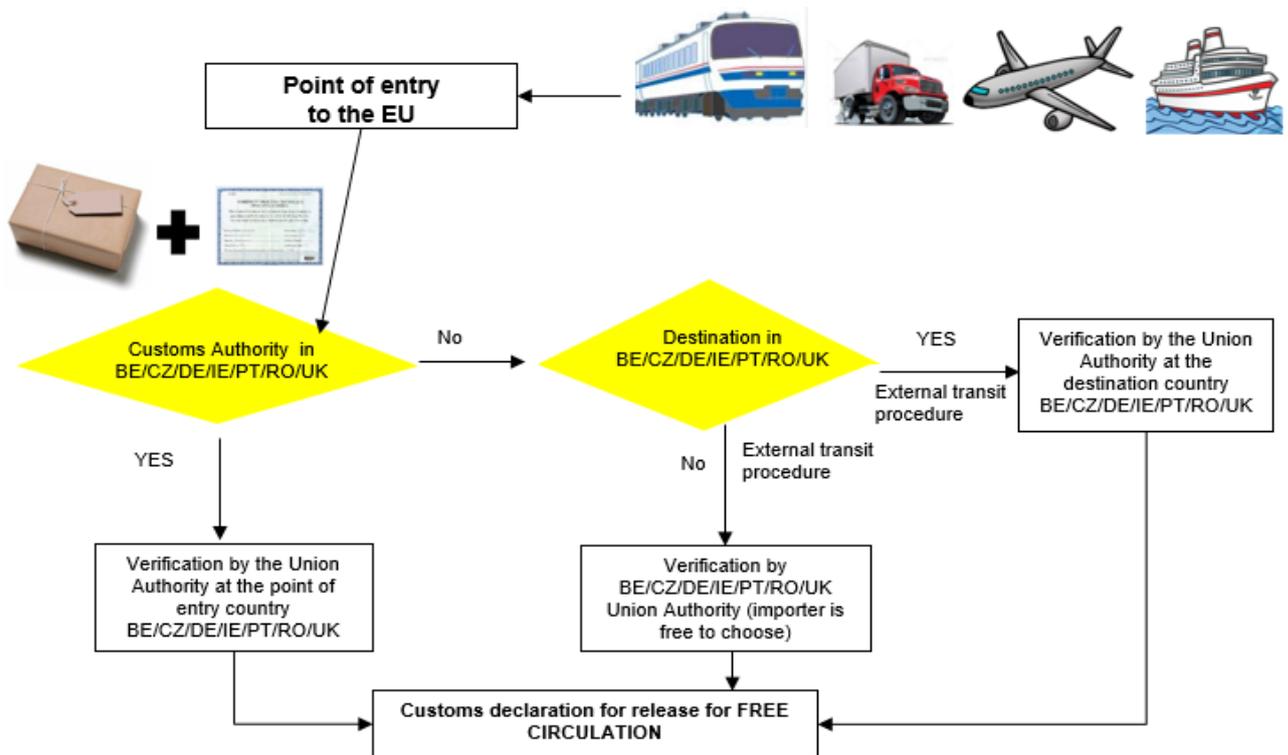
The customs authorities at the point of entry into EU territory should register the shipment of rough diamonds for the **external transit procedure**. This procedure, as provided for in Council Regulation (EU) No 952/2013 of 9 October 2013, allows the movement of goods from one point to another within the customs territory of the EU, without such goods being subject to import duties.

Registration for this procedure allows the transfer of the rough diamonds to a Union authority for verification.

After verification by a Union authority, the goods are submitted to the relevant national customs authorities for regular customs procedures.

All details of rough diamond shipments are recorded on a computerised database and reported to the European Commission as the KP authority on a monthly basis in accordance with Article 15 of Council Regulation (EC) No 2368/2002.

Fig. 1 The import procedure for rough diamonds



Applicable rules in Council Regulation (EC) No 2368/2002

Article 4 provides:

1. Containers and the corresponding certificates shall be submitted for verification, together and at the earliest opportunity, to a Union authority either in the Member State where they are imported or in the Member State for which they are destined, as indicated in the accompanying documents.
2. In cases where rough diamonds are imported into a Member State where there is no Union authority, they shall be submitted to the appropriate Union authority in the Member State for which they are destined. If a Union authority exists neither in the importing Member State nor in the Member State of destination they shall be submitted to an appropriate Union authority in another Member State.
3. The Member State where the rough diamonds are imported shall ensure their submission to the appropriate Union authority provided for in paragraphs 1 and 2. Customs transit may be granted to that effect. If such customs transit is granted, the verification provided for by this Article shall be suspended until arrival at the appropriate Union authority.
4. The importer shall be responsible for the proper movement of the rough diamonds and the costs thereof.

The role of the TARIC system

- To facilitate the uniform application of EU customs and tariffs legislation by the customs services of each Member State, the EU created the Integrated Tariff of the Community (**TARIC**, Tarif Intégré de la Communauté) and a Combined Nomenclature (CN) in 1987.
- TARIC is an electronic system that indicates all customs duties or commercial policy measures applicable to any given product. Its use is obligatory in customs declarations in trade with third countries.
- If rough diamonds are declared at any Union customs authority for release for free circulation into the EU, TARIC automatically flags the existence of a trade restriction (electronic warning screen) and refers to Council Regulation (EC) No 2368/2002, which specifies the applicable rules.

3. Exports of rough diamonds from the EU

- To obtain an EU Kimberley Process certificate for export, the exporter must first provide conclusive documentary evidence that the diamonds to be exported were legally imported into the EU⁵. This may involve an **export declaration** and/or providing invoices from the original import certificate onwards.
- According to Article 13 of Council Regulation (EC) No 2368/2002, the Union authority may accept as conclusive evidence of lawful import into the EU a signed declaration by the exporter to that effect, if the exporter is a member of a diamond organisation implementing the system of warranties and industry self-regulation referred to in Article 17 of the same Regulation.
- Before issuing an EU certificate, the Union authority may decide to **physically inspect** the contents of the consignment in order to verify that the conditions laid down in Council Regulation (EC) No 2368/2002 have been met.
- Within the validity period of the KP Certificate, economic operators are in principle free to choose when and where customs formalities and the actual export from the EU are to take place. Verification of the actual export of the shipment is undertaken by control of import receipts from the receiving participant.
- While fully respecting the procedures laid down by Council Regulation (EC) No 2368/2002, information and documentation handling might be slightly different among Union authorities: The Union authorities in London, Lisbon and Idar-Oberstein systematically send advance notices of shipments, containing information on the carat weight, value, country of origin or provenance, exporter, importer and the serial number of the Certificate, to the importing authorities of participants by e-mail. The Union authority in Antwerp sends this information to all those Participants that have made a respective request. The Union authority in Prague systematically sends advance notices of shipments, containing information on the serial number of the Certificate and date of its issue, to the importing authorities of participants by e-mail.

⁵ According to Article 12(1) of Council Regulation (EC) No 2368/2002, a Union authority may issue a Union certificate to an exporter when it has established that the exporter has provided conclusive evidence that

- (a) the rough diamonds for which a certificate is being requested were lawfully imported in accordance with the provisions of Article 3,
- (b) the other information requested on the certificate is correct;
- (c) the rough diamonds are effectively destined for arrival in the territory of a participant, and
- (d) the rough diamonds are to be transported in a tamper-resistant container

4. Statistical reporting

Union authorities provide statistical returns to the European Commission, which in turn is responsible for compilation and submission of statistical reports. A summary of Kimberley statistics can be found here: https://kimberleyprocessstatistics.org/public_statistics

5. Import confirmation and resolution of discrepancies and difficulties

The Administrative Decision on import confirmation adopted by the Plenary of the Kimberley Process in 2011 states:

In order to enhance the accuracy of statistical data, Importing Participants should implement Import Confirmation by any of the following methods:

- a. forwarding a hard copy of the import confirmation coupon through the channels of mail service or by using specialized courier agencies, to the relevant Exporting Participant, and/or*
- b. sending an e-mail upon receipt of the rough diamond shipment, or in form of monthly overview (excel file) of shipments received. This list should contain minimal details such as KPC number, weight and value.*

Questions concerning import confirmation should be brought to the attention of the relevant Union authority.

Only if a Union authority is not in a position to answer a question, or if additional information that the Union authority cannot provide is needed, should this question be addressed to the European Commission.

6. Resolution of discrepancies and other difficulties

The same principle as under Section 5 above applies to the resolution of discrepancies and other difficulties. These issues should preferably be solved with the relevant Union authority. The resulting solution should be communicated to the European Commission.

7. Special Member State territories

Special Member State territories and their status in respect of the Kimberley Process (outermost regions, overseas countries and territories etc.)

	EU territory (EU Treaty applies)	Kimberley legislation applies	EU customs territory	Customs checks required for intra-EU trade
French Overseas Departments (La Réunion, Martinique, Mayotte, Guadeloupe, Guyane) (FR)	X	X	X	
Saint Martin (FR)	X	X	X	
Canary Islands (ES)	X	X	X	
Madeira (PT)	X	X	X	
the Azores (PT)	X	X	X	
Island of Helgoland (DE)	X	X		X
Territory of Büsingen (DE)	X	X		X
Ceuta and Melilla (ES)	X	X		X
Livigno (IT)	X	X		X
Campione d'Italia (IT)	X	X	X	
Gibraltar	X	X		X
Jersey (UK)			X	
Guernsey (UK)			X	
Isle of Man (UK)			X	
Monaco (FR)			X	
Åland Islands (FI)	X	X	X	

All other dependent territories of the EU Member States are **not part of the EU Territory or the EU customs**. These include the Overseas Countries and Territories (OCT) listed below. OCTs have constitutional ties with Denmark, France, the Netherlands or the United Kingdom. Although the nationals of OCTs are in principle EU citizens, these territories are not part of the EU and not directly subject to EU law.

Overseas Countries and Territories:

Anguilla (UK)
Aruba (NL)
Bermuda (UK)
Bonaire (NL)
British Antarctic Territory (UK)
British Indian Ocean Territory (UK)
British Virgin Islands (UK)
Cayman Islands (UK)
Curaçao (NL)
Falkland Islands (UK)
French Polynesia (FR)
French Southern and Antarctic Territories (FR)
Greenland (DK)
Montserrat (UK)
New Caledonia and Dependencies (FR), Pitcairn (UK)
Saba (NL)
Sint Eustatius (NL)
Sint Maarten (NL)
South Georgia and South Sandwich Islands (UK)
Saint Barthelemy (St. Barth) (FR)
Saint Helena, Ascension Island, Tristan da Cunha (UK)
Saint Pierre and Miquelon (FR)
Turks and Caicos Islands (UK)
Wallis and Futuna Islands (FR)

If you have any questions regarding exports to, or imports from any of the above referenced territories and countries, or any areas in customs union with the EU, please do not hesitate to contact the European Commission.

The special status of Greenland

Greenland is not part of EU territory but it is included in the list of OCTs set out in Annex II to the Treaty on the Functioning of the European Union. In 2014 rules and procedures were put in place to enable Greenland's participation in the KPCS through its cooperation with the EU.

The relevant legislation is the following:

- Regulation 257/2014 amending Council Regulation (EC) No 2368/2002 as regards the inclusion of Greenland in implementing the Kimberley Process Certification Scheme; and
- Council Decision 136/2014/EU of 20 February 2014 laying down rules and procedures to enable the participation of Greenland in the Kimberley Process Certification Scheme

These rules and procedures will apply from the day Greenland notifies the European Commission that it has implemented in national law the relevant provisions of Regulation (EC) No 2368/2002, which will then allow the inclusion of Greenland in the KPCS.

8. *Procedures for irregular shipments*

- Regulation (EC) No 2368/2002, implementing the KPCS in the EU sets out the conditions under which imports or exports of rough diamonds into or out of EU territory are permitted. Given that the Regulation is directly applicable law throughout the EU, all relevant authorities (notably national customs authorities) are bound by its provisions.
- The Regulation provides that the import of rough diamonds into the EU, and the export of rough diamonds from the EU, are prohibited unless the conditions set out in Article 3 (for imports) or Article 11 (for exports) are fulfilled.
- The Regulation also provides that where the conditions are not fulfilled, the competent authorities (specifically, one of the Union authorities or any other competent authority of the Member State concerned, such as customs authorities) have to detain the shipment.
- A shipment cannot therefore be released (or sent back to the country of provenance, in the case of incoming shipments) unless all the conditions laid down in Regulation (EC) No 2368/2002 are met. This is a strong deterrent to any attempt to circumvent the provisions of the Regulation.
- In addition, the Union Customs Code⁶ (which is also directly applicable law in all Member States) contains provisions relating to the handling of goods to which restrictions or prohibitions apply (as in the case of rough diamonds). Specifically, the Customs Code provides that goods for which the required documentation for the relevant customs procedure has not been produced **cannot be released**. The Customs Code further provides that any necessary measures, including **confiscation** and **sale**, are to be taken to deal with goods which cannot be released.
- Regulation (EC) No 2368/2002 also provides (Article 27) that all Member States are to determine sanctions in their national law or regulations for infringements of the Regulation. While the precise nature of sanctions is at the discretion of the Member States (and may be based on existing customs or external trade laws or regulations), the Regulation stipulates that the sanctions have to be **effective, proportionate and dissuasive**, and capable of preventing those responsible for the infringement from obtaining any economic benefit from their action.
- The European Commission has an overview of the sanctions determined by the different Member States pursuant to Article 27. The European Commission, pursuant to Article 24(3) shall be notified of any information suggesting that the provisions of Regulation (EC) No 2368/2002 are being, or have been, circumvented.

⁶ Council Regulation (EC) No 952/2013 of 9 October 2013, notably Articles 134, 149-150, 179 and 197-198.

9. *Industry self-regulation in the EU*

- The EU explicitly endorses the principle of **industry self-regulation**, as laid down in Section IV of the KPCS Core Document, in its legislation implementing the Kimberley Process Certification Scheme in the EU.
- Chapter IV (“Industry Self-Regulation”) of Council Regulation (EC) No 2368/2002 sets out requirements for the establishment of a system of warranties and industry self-regulation by organisations representing traders in rough diamonds and provides for a “**fast track**” procedure for organisations applying a system of warranties and industry self-regulation.
- To be listed in Annex V of Council Regulation (EC) No 2368/2002, an organisation representing traders in rough diamonds shall provide conclusive evidence to the European Commission that it has adopted rules and regulations which oblige the organisation and its members to respect specific principles and procedures set out in Article 17 of the Regulation.
- It is important to clarify that by the term ‘industry self-regulation’ the EU does not mean the delegation of governmental responsibilities to industry bodies. Rather it means the granting of a privilege (‘fast track’ issuance of KP certificates) to organisations representing traders in rough diamonds, which meet the requirements of Article 17 of the Regulation.
- In particular, in the rules and regulations of such organisations members undertake that they will:
 - sell only diamonds purchased from legitimate sources in compliance with the KPCS;
 - guarantee that, on the basis of their personal knowledge and/or written warranties provided by the suppliers of rough diamonds, the rough diamonds sold are not conflict diamonds;
 - not buy rough diamonds from suspect or unknown sources of supply and/or rough diamonds originating in non-participants in the KPCS;
 - not knowingly buy, sell or assist others in buying or selling conflict diamonds;
 - create and maintain for at least three years records of invoices received from suppliers and issued to customers, and
 - instruct an independent auditor to certify that these records have been created and maintained accurately.
- The rules and regulations adopted by the organisation must foresee disciplinary measures, in particular the obligation for the organisation to expel any member found, after a due process inquiry by the organisation itself, to have seriously violated the principles laid down in Article 17 of the Regulation.

- Union authorities communicate inter alia relevant developments and information on the KP to the organisations representing traders in rough diamonds, commonly known in the diamond trade sector as ‘Bourses’ :
 - updates to KP Participants list
 - New EU Regulations
 - New technical guidelines, best practices, administrative decisions etc.
 - Chair’s notices
 - Practical guidelines for import and export procedures etc.
- In turn, ‘Bourses’ should pass on this information to their members.
- In accordance with Article 13 of Council Regulation (EC) No 2368/2002, members of a listed organisation can obtain an EU certificate on the basis of a signed declaration by that member that the rough diamonds to be exported were lawfully imported.
- By its Regulations No 762/2003 of 30 April 2003 and No 1214/2003 of 7 July 2003, the Commission granted listing in Annex V to:
 - Antwerpsche Diamantkring C.V.;
 - Beurs voor Diamanhandel C.V.;
 - Diamantclub van Antwerpen C.V.;
 - Vrije Diamanhandel N.V. (all based in Antwerp); and,
 - the London Diamond Bourse and Club

upon their application and following verification that each of the ‘Bourses’ has adopted rules and regulations, in particular a binding Code of Conduct, that ensure compliance by the Bourses and their members with the requirements laid down in the Regulation.

On 7 September 2004, the Belgian Minister of Economy and the Presidents of the four Antwerp Bourses signed a Protocol on the modalities for the implementation of the provisions on industry self-regulation in Belgium. This Protocol provides a framework for the Belgian Union Authority with regard to the monitoring of the functioning and implementation of article 17.

- In accordance with Article 17(5) of Council Regulation (EC) No 2368/2002, the Union authorities in Antwerp and London provide the European Commission with annual reports on their assessment of the functioning of the system of warranties and industry self-regulation on an annual basis.
- The Union authorities carry out random spot-checks of company audits. This may involve:
 - examining the invoices of the companies, and checking for the presence of the warranty on the invoices;
 - checking the presence of Kimberley Process certificates in respect of imports and exports of rough diamonds; and
 - checking data on the annual stock declarations against information on the KPC database held by the Union authority.

10. Contact points

a) Kimberley Process

www.kimberleyprocess.com

b) European Commission

Service for Foreign Policy Instruments

KP Focal Point

Rond Point Schuman, 9A

B-1049 Brussels, Belgium

Email: EC-KIMBERLEY-PROCESS@ec.europa.eu

c) Union authorities

Under the terms of the relevant legislation (Council Regulation (EC) No 2368/2002 of 20 December 2002), each Member State of the EU may designate a competent authority at the national level to act as a Union authority acting as the importing and exporting authority for the purposes of the KPCS. After verification that such an authority is in a position to exercise effectively the role of importing and exporting authority in accordance with the provisions of the KPCS and relevant EU legislation, and consultation of a Committee composed of representatives of all EU Member States, each authority is listed in Council Regulation (EC) No 2368/2002 as amended. There are now seven such Union authorities whose contact details can be found in Annex III to Council Regulation (EC) No 2368/2002.

In accordance with the changes enacted by the Treaty of Lisbon, whereby the European Union (EU) replaced and succeeded the European Community, the term ‘EU certificate’ replaced the term ‘Community certificate’ as defined in Article 2(g) of Council Regulation (EC) No 2368/2002.

By virtue of the adoption of the Administrative Decision ‘Compilation of Modifications to Technical definitions’ by Kimberley Process Participants at the Brussels Plenary in November 2018, the term ‘country of origin’ is to be replaced by the term ‘country of mining origin’ in Kimberley Process Certificates. New specimens of EU certificates are issued as of 1 January 2020.

The Union authorities issue EU certificates with numbers as listed below, which are applicable as of 01.01.2020

	EU Certificate N°s:	
	<u>from</u>	<u>to</u>
Belgium	900001	upwards
UK	800001	850000
Germany	850001	860000
Czech Republic	860001	861000
Romania	861001	862000
Portugal	862001	863000
Ireland	863001	873000