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NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND THE EURATOM *ACQUIS*

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and from the European Atomic Energy Community (Euratom) and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020. Until that date, EU and Euratom 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, interested stakeholders are advised to check whether their particular situation falls under one of the below described circumstances and to take the necessary measures considering the legal changes in relation to the United Kingdom after the end of the transition period.

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.

Please note:

This notice does not address rules and procedures under the TFEU, and in particular:

- customs procedures for import and export;
- rules in relation to food, incl. limits on radioactive caesium contamination, and irradiated food and;
- rules on radiopharmaceuticals;
- rules on dual use items; and
- export controls and embargoes.

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 and to the potential impacts for joint undertakings as regards, *inter alia*, the Euratom Joint Undertaking Fusion for Energy (F4E)⁶.

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the Euratom *acquis* no longer applies in the United Kingdom.⁷ This has in particular the following consequences:

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 coming from inside the Community or from outside it. This exclusive right is exercised by the Agency's co-signature to all contracts pertaining to the supply of relevant materials. In specific cases, as required by the Treaty, ESA needs to be authorised by a decision of the Commission to co-sign a contract.

Ahead of the withdrawal of the United Kingdom from the EU and Euratom, the Agency assessed all the supply contracts in connection with the United Kingdom, which it had concluded, and decided to give effect to its signature anew. Likewise, it sought Commission decisions, confirming authorisations previously granted by the Commission for a number of contracts where such authorisations were required. The

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

⁶ The European Joint Undertaking for ITER and the Development of Fusion for Energy established under Council Decision 2007/198/Euratom of 29 March 2007 (OJ L 90, 30.3.2007, p 58), as amended.

⁷ Regarding the applicability of certain parts of the Euratom *acquis* to Northern Ireland, see Part C of this notice.

EU commercial contracting parties were informed individually of the outcome of the assessment and of the decisions taken.

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 Euratom-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.⁸

After the end of the transition period, this requirement will apply to exports from Euratom to the United Kingdom.

2.2. Consent of third parties and other special procedures

Euratom has concluded several Nuclear Cooperation Agreements⁹ 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 without being submitted to a special procedure¹⁰ and/or the prior consent of the third country concerned.

After the end of the transition period, the United Kingdom will no longer participate in the nuclear common market. Consequently, 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.

⁸ The Commission's authorisation to export Euratom-produced nuclear materials towards a third country will not be granted if the recipients of the supplies fail to satisfy that the general interests of the Community will be safeguarded, or if the terms and conditions of the contracts concerned are contrary to the objectives of the Euratom Treaty.

⁹ 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 P 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, 21.10.2003, p. 9.

¹⁰ 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).

3. BASIC SAFETY STANDARDS DIRECTIVE

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). After the end of the transition period, 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 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. AUTHORISATION/INFORMATION OF SHIPMENTS

At the end of the transition period, Council Regulation (Euratom) No 1493/93 on shipments of radioactive substances between Member States¹³ will cease to apply to shipments between an EU Member State and the United Kingdom.

Council Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste¹⁴ and spent fuel lays down a Community system of supervision and control of transboundary shipments of radioactive waste and spent fuel. At the end of the transition period, the provisions of Chapter 2 of this Directive (on intra-Community shipments) will cease to apply to shipments between a Member State

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.

¹² "Building materials" under Council Directive 2013/59 should also be regarded as "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 Council Regulation (Euratom) No 1493/93 of 8 June 1993 on shipments of radioactive substances between Member States OJ L 148, 19.6.1993, p. 1.

¹⁴ Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel, L 337, 5.12.2006, p. 21.

and the United Kingdom and Chapter 3 of this Directive (on extra-Community Shipments) will apply to shipments related to the United Kingdom.

Council Directive 2011/70/Euratom establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste¹⁵ sets rules for shipments of radioactive waste from a Member State to a third country with the aim of disposal. After the end of the transition period, these rules apply for shipments from the EU to the United Kingdom. According to Article 4(4), second subparagraph of Council Directive 2011/70/Euratom these rules include, *inter alia*:

- the obligation that the exporting Member State in question needs to have in place an agreement with the third country to use a disposal facility;
- an obligation for the Member State in question to inform the Commission of the content of such agreement prior to shipment to a third country;
- the requirement that the Member State in question takes reasonable measures to be assured that the disposal facility is authorised and operating.

5. OTHER ISSUES

At the end of the transition period, the freedoms guaranteed under the Euratom Treaty, including the free movement of goods and products¹⁶, 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 Member States.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

1. END OF COMMUNITY RESPONSIBILITY FOR MATTERS RELATED TO THE UNITED KINGDOM

According to Article 80 of the Withdrawal Agreement, after the end of the transition period the United Kingdom will have sole responsibility for ensuring that its international obligations in the nuclear field are complied with.

2. CONTINUED SAFEGUARDS

At the end of the transition period, the application of nuclear safeguards under the Euratom Treaty will cease to apply to and in the United Kingdom. As of this date, it is the responsibility of the United Kingdom to apply a new domestic safeguards regime.

¹⁵ 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.

¹⁶ As specified by Annex IV to the Euratom Treaty.

According to Article 81 of the Withdrawal Agreement, the United Kingdom shall apply, after the end of the transition period, a safeguard regime offering equivalent effectiveness and coverage as that provided by Euratom at the end of the transition period.

The trilateral safeguards agreement between the United Kingdom, Euratom, and the International Atomic Energy Agency [INFCIRC/263, as amended] will cease to apply to and in the United Kingdom at the end of the transition period. The same holds for all other agreements concluded by Euratom and third countries and international organisations. Articles 81 and 82 of the Withdrawal Agreement oblige the United Kingdom to fulfil, or otherwise identify appropriate arrangements, the obligation in relation to nuclear equipment, nuclear material and other nuclear items present on the territory of the United Kingdom at the end of the transition period.

3. OWNERSHIP AND RIGHTS OF USE AND CONSUMPTION OF SPECIAL FISSILE MATERIALS IN THE UNITED KINGDOM

According to Article 83 of the Withdrawal Agreement, in case special fissile materials located on the territory of the United Kingdom are held by an entity established in the territory of an EU Member State at the end of the transition period, both the EU and the Euratom Community will continue to have certain special rights related to such materials as foreseen in the Withdrawal Agreement under the above mentioned provision.

4. MOVEMENTS OF GOODS ONGOING AT THE END OF THE TRANSITION PERIOD

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.

This provision applies to ongoing shipments of spent fuel and radioactive waste ongoing at the end of the transition period, which has been authorised on the basis of the provisions set out in Chapter 2 (on intra-community shipments) of Council Directive 2006/117/Euratom. It is without prejudice to the operation of procedures pursuant to Nuclear Cooperation Agreements between the Euratom Community and third countries.

Example: A specific consignment of spent fuel, the movement of which was already authorised and 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 for intra-Community shipments under Council Directive 2006/117/Euratom.

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.¹⁷ The IE/Ni Protocol is subject to periodic consent of the Northern

¹⁷ Article 185 of the Withdrawal Agreement.

Ireland Legislative Assembly, the initial period of application extending to 4 years after the end of the transition period.¹⁸

The IE/Ni Protocol makes certain provisions of EU and Euratom 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.¹⁹

The IE/Ni Protocol provides that Directive 2006/117/Euratom applies to and in the United Kingdom in respect of Northern Ireland.²⁰

This means that references to the EU and Euratom in relation to Council Directive 2006/117/Euratom 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:

- A shipment of radioactive waste or spent fuel between an EU Member States and Northern Ireland is an intra-Community shipment for the purposes of Directive 2006/117/Euratom;
- A shipment of radioactive waste or spent fuel from a third country or from Great Britain to Northern Ireland is an extra-Community shipment (“import into the Community”) for the purposes of Directive 2006/117/Euratom;
- A shipment of radioactive waste or spent fuel from Northern Ireland to a third country is an extra-Community shipment (“export out of the Community”) for the purposes of Directive 2006/117/Euratom;

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. Therefore, Directive 2006/117/Euratom does not apply to shipments of radioactive waste or spent fuel from Northern Ireland to Great Britain.

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.²¹

¹⁸ Article 18 of the IE/Ni Protocol.

¹⁹ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/Ni Protocol.

²⁰ Article 5(4) of the IE/Ni Protocol and section 25 of annex 2 to that Protocol.

²¹ 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.

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
Directorate-General Energy