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21 March 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF PLANT HEALTH

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a ‘third country’.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that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 as of 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 as of the end of the transition period (Part C below).

Advice to stakeholders:

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.

To address the consequences set out in this notice, stakeholders are in particular advised to:

- ensure treatment of wood packaging material (such as pallettes) used in trade between the EU and the United Kingdom; and
- adapt distribution channels, in particular where imports of plants are prohibited or subject to specific restrictions.

A. LEGAL SITUATION AS OF THE END OF THE TRANSITION PERIOD

As of the end of the transition period, the EU rules in the field of plant health no longer apply to the United Kingdom.⁶ This has in particular the following consequences:

1. INTRODUCTION OF PLANTS, PLANT PRODUCTS OR OTHER OBJECTS INTO THE EU

According to Article 40 of Regulation (EU) 2016/2031,⁷ the introduction into the Union of certain plants, plant products and other objects is prohibited. The prohibited plants, plant products and other objects are listed in Annex VI to Implementing Regulation (EU) 2019/2072.⁸

According to Article 41 of Regulation (EU) 2016/2031, certain plants, plant products and other objects, listed in Annex VII to Implementing Regulation (EU) 2019/2072, may only be introduced into the Union if they comply with the special requirements set out in that Annex. Those requirements may consist in a set of options, such as origin from pest-free countries, origin from pest-free areas or subjection to a certification scheme of inspections, sampling, testing, treatments or other measures, ensuring freedom from the pest concerned.

For example:

- The import of tubers of species of *Solanum* L. (including ware potatoes), and their hybrids is in principle prohibited;⁹
- The import of fruits of *Citrus*, *Malus* and *Pyrus*, which may originate from other third countries and have been re-exported from the United Kingdom to the Union, needs to be accompanied by a phytosanitary certificate and is subject to specific requirements, in relation to origin of those fruits from countries, areas or

⁶ Regarding the applicability of the EU plant health law to Northern Ireland, see Part C of this notice.

⁷ Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, OJ L 317, 23.11.2016, p. 4.

⁸ Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, OJ L 319, 10.12.2019, p. 1.

⁹ Points 15 to 17 of Annex VI to Implementing Regulation (EU) 2019/2072, where the respective exceptions are also laid down.

places of production free from specific pests, information on traceability or official inspections and surveys concerning the presence of those pests;¹⁰

- Wood packaging material, whether or not actually in use in the transport of objects of all kinds, may only be introduced into the Union if it is compliant with a treatment and mark as specified in the FAO International Standard for Phytosanitary Measures No 15 ('ISPM 15').¹¹

2. OFFICIAL CONTROLS AT IMPORT

According to Article 72 of Regulation (EU) 2016/2031, the plants, plant products and other objects listed in Part A of Annex XI to Implementing Regulation (EU) 2019/2072 require a phytosanitary certificate for their introduction into the Union, and those listed in Annex XII of that Regulation require extra phytosanitary guarantees for import into the respective protected zones. This applies, for example, to the import from or through the United Kingdom of tomatoes, pomegranate, isolated bark of conifers or wood of several species, such as *Platanus L.*, *Populus L.* or conifers.

Those commodities are subject to official controls at border control posts pursuant to Articles 47 to 64 of Regulation (EU) 2017/625.¹² This applies, for example, to the import from or through the United Kingdom of melons, figs, coffee berries, tea leaves, Brazil nuts, asparagus, cucumbers, cabbages or onions. For certain plant categories, reduced frequencies of identity and physical checks may be applied for imports from the United Kingdom under the conditions set out in Commission Regulation (EC) No 1756/2004.¹³

According to Article 73 of Regulation (EU) 2016/2031, all other plants listed in Part B of Annex XI to Implementing Regulation (EU) 2019/2072, namely plants such as fruits, vegetables or cut flowers not subject to any specific import requirements, do also require a phytosanitary certificate for their introduction into the Union. Those plants are subject to the provisions of Articles 44 to 46 of Regulation (EU) 2017/625, which set out minimum risk-based import controls.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

Article 41 of the Withdrawal Agreement provides that an existing and individually identifiable good lawfully placed on the market in the EU or the United Kingdom before the end of the transition period may be further made available on the market of the EU or

¹⁰ Points 61, 64, 65 and 66 of Annex VII to Implementing Regulation (EU) 2019/2072.

¹¹ Article 43 of Regulation (EU) 2016/2031.

¹² Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, OJ L 095 7.4.2017, p. 1.

¹³ Commission Regulation (EC) No 1756/2004 of 11 October 2004 specifying the detailed conditions for the evidence required and the criteria for the type and level of the reduction of the plant health checks of certain plants, plant products or other objects listed in Part B of Annex V to Council Directive 2000/29/EC, OJ L 313, 12.10.2004, p. 6.

of the United Kingdom and circulate between these two markets until it reaches its end-user.

The economic operator relying on that provision bears the burden of proof of demonstrating on the basis of any relevant document that the good was placed on the market in the EU or the United Kingdom before the end of the transition period.¹⁴

For the purposes of these provisions, “placing on the market” means the first supply of a good for distribution, consumption or use on the market in the course of a commercial activity, whether in return or payment or free of charge.¹⁵ ‘Supply’ means that ‘an existing and individually identifiable good, after the stage of manufacturing has taken place, is the subject matter of a written or verbal agreement between two or more legal or natural persons for the transfer of ownership, any other property right, or possession concerning the good in question, or is the subject matter of an offer to a legal or natural person or persons to conclude such an agreement.’¹⁶

Example: A consignment of tubers of species of *Solanum L.* sold by a UK-based producer to UK-based wholesaler before the end of the transition period can still be imported further into the EU.

This is without prejudice to phytosanitary controls that may apply to imports as of the end of the transition period.

C. APPLICABLE RULES IN NORTHERN IRELAND AFTER THE END OF THE TRANSITION PERIOD

As from 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 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 law applicable also to and in the United Kingdom in respect of Northern Ireland. It also provides that insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, it is assimilated to a Member State.¹⁹

The IE/NI Protocol provides that EU plant health law applies to and in the United Kingdom in respect of Northern Ireland.²⁰

¹⁴ Article 42 of the Withdrawal Agreement.

¹⁵ Article 40(a) and (b) of the Withdrawal Agreement.

¹⁶ Article 40(c) of the Withdrawal Agreement.

¹⁷ Article 185 of the Withdrawal Agreement.

¹⁸ Article 18 of the IE/NI Protocol.

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

²⁰ Article 5(4) and section 41 of annex 2 to the IE/NI Protocol.

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.

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

- Plants and plant products moved from Northern Ireland to the EU are not an introduction/import (see above, section A);
- Plants and plant products moved from Great Britain to Northern Ireland are an introduction/import (see above, section A);
- Risk management measures, such as protected zones, are established in Northern Ireland on the basis of EU plant health law.

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;²¹
- initiate objections, safeguard or arbitration procedures to the extent that they concern regulations, standards, assessments, registrations, certificates, approvals and authorisations issued or carried out by EU Member States.²²

The website of the Commission on EU rules on plant health (https://ec.europa.eu/food/plant/plant_health_biosecurity_en) provides general information concerning Union legislation applicable to plants. These pages will be updated with further information, where necessary.

European Commission
Directorate-General for Health and Food Safety

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.

²² Fifth subparagraph of Article 7(3) of the IE/Ni Protocol.