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5 April 2019

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF RECREATIONAL CRAFT AND PERSONAL WATERCRAFT

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that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 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:

- 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, manufacturers of recreational craft and personal watercraft are in particular advised to:

- ensure that certificates of conformity and post-construction assessment identification codes required under Directive 2013/53/EU are issued by an EU notified body and that the unique code of the manufacturer is assigned by an EU Member State authority or authorised national body;
- ensure compliance with establishment requirements for authorised representatives and importers, and adapt labelling as necessary.

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the EU rules in the field of recreational craft and personal watercraft, and in particular Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft⁶ no longer apply to the United Kingdom.⁷ This has in particular the following consequences:

1. RECREATIONAL CRAFT AND PERSONAL WATERCRAFT PLACED ON THE EU MARKET – GENERAL ASPECTS

Regarding the need for a certificate issued by a Notified Body established in one of the EU Member States, the requirement for the authorised representative to be established within the EU and the identification of the importer, please refer to Part A of the “*Notice to stakeholders – withdrawal of the United Kingdom and EU rules in the field of industrial products*” of 13 March 2020.⁸

2. ASSIGNMENT OF THE UNIQUE CODE OF THE MANUFACTURER – GENERAL REQUIREMENTS

Point 2.1 of Part A of Annex I to Directive 2013/53/EU requires each watercraft to be marked with an identification number including, inter alia, a “*unique code of the manufacturer assigned by the national authority of the Member State.*”

Commission Implementing Regulation (EU) 2017/1 of 3 January 2017 on procedures for watercraft identification⁹ provides that the unique code of the manufacturer is assigned by Member State authorities or authorised national bodies.¹⁰

⁶ OJ L 354, 28.12.2013, p. 90.

⁷ Regarding the applicability of Directive 2013/53/EU to Northern Ireland, see Part C of this notice.

⁸ https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_industrial_products.pdf.

⁹ OJ L 1, 4.1.2017, p. 1.

¹⁰ Articles 4 and 5 of Implementing Regulation (EU) 2017/1.

Manufacturers established in a Member State are to apply for the assignment of the unique code to the national authority or national body in the Member State in which they are established.¹¹

Manufacturers established in a third country are to apply to the national authority or national body in the Member State in which they intend to place the watercraft on the market. The application is to be made only in one Member State.¹²

It will no longer be possible to place on the market watercraft bearing a UK-granted unique code of the manufacturer after the end of the transition period. The manufacturers concerned should therefore obtain a new unique code from an EU Member State.

2.1. Consequences for manufacturers established in the UK with the unique code of the manufacturer assigned by the UK authorities

Manufacturers established in the UK who currently have the unique code of the manufacturer assigned by the UK authorities and who intend to place their products on the EU market after the end of the transition period will be considered as manufacturers established in a third country. They will therefore have to apply for the assignment of a new unique code of the manufacturer to the national authorities of the EU Member State in which the manufacturer intends to place the watercraft on the market.

2.2. Consequences for manufacturers established in a third country with the unique code of the manufacturer assigned by the UK authorities

Manufacturers established in a third country who currently have the unique code of the manufacturer assigned by the UK authorities and intend to place their products on the EU market after the end of the transition period will have to apply for the assignment of a new unique code of the manufacturer to the national authorities of the EU Member State in which they intend to place the watercraft on the market.

2.3. Consequences for manufacturers established in the EU with the unique code of the manufacturer assigned by an EU Member State

No consequences.

3. ASSIGNMENT OF THE UNIQUE CODE OF THE MANUFACTURER – PROCEDURE IN CASE OF POST-CONSTRUCTION CONFORMITY ASSESSMENT

When the post-construction conformity assessment procedure referred to in Articles 19 and 23 of Directive 2013/53/EU is applied, the unique code of the manufacturer is replaced by the post-construction assessment identification code assigned to the

¹¹ Article 6 of Implementing Regulation (EU) 2017/1.

¹² Article 7 of Implementing Regulation (EU) 2017/1.

notified body by the national authority of the Member State where the notified body is established.¹³

For products placed on the EU market after the end of the transition period that have been assessed according to the post-construction assessment procedure, the post-construction assessment identification code will therefore be issued by the national authority of the Member State where the EU notified body is established.

Please refer to the abovementioned Notice to stakeholders in the field of industrial products for further information about the consequences of the United Kingdom's withdrawal for conformity assessment procedures requiring the intervention of a notified body.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

1. RECREATIONAL CRAFT AND PERSONAL WATERCRAFT PLACED ON THE EU OR THE UK MARKET BEFORE THE END OF THE TRANSITION PERIOD

Article 41(1) 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 of the United Kingdom and circulate between these two markets until it reaches its end-user. Where provided in the applicable provisions of Union law, such a good may also be put into service in the EU or in the United Kingdom.

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 that provision, “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 for payment or free of charge.¹⁵ “Supply of a good for distribution, consumption or use” 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 “Putting into service” means “the first use of a good within the Union or the United Kingdom by the end

¹³ The fourth paragraph of Section 3 of Annex V to Directive 2013/53/EU and Article 8 of Implementing Regulation (EU) 2017/1.

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.

user for the purposes for which it was intended, or in the case of marine equipment, placing on board.”¹⁷

This means that recreational craft and personal watercraft placed on the UK market according to this definition before the end of the transition period with a UK-granted unique code of the manufacturer can still be made available (e.g. can continue to be supplied for distribution or use) and remain in use in the EU after the end of the transition period, and vice-versa.

Example: Recreational craft and personal watercraft sold by a UK-based manufacturer to a UK-based wholesaler (i.e. placed on the market) before the end of the transition period based on a certificate issued by a Notified Body established in the United Kingdom and with a UK-granted unique code of the manufacturer can still be distributed further and used in the EU after the end of the transition period on the basis of that certificate and UK-granted unique code of the manufacturer. This is without prejudice to the obligation to appoint a new authorised representative established in the EU, where the current one is UK-based, as set out under Section A.1 above.

For further information regarding the notion of placing on the market and the demonstration of proof of placing on the market, please refer to Part B of the abovementioned “*Notice to stakeholders – withdrawal of the United Kingdom and EU rules in the field of industrial products*” of 13 March 2020.

2. TRANSFER OF INFORMATION FROM A UK BODY TO AN EU NOTIFIED BODY AND VICE-VERSA

Article 46 of the Withdrawal Agreement lays down provisions to facilitate, if need be, the transfer of information related to conformity assessments between notified bodies established in the UK or in the EU in case of succession of notified bodies. According to Article 46(1), “the United Kingdom shall ensure that information held by a conformity assessment body established in the United Kingdom in relation to its activities as a notified body under Union law before the end of the transition period is made available at the request of the certificate holder, without delay, to a notified body established in a Member State as indicated by the certificate holder.” Article 46(2) contains a mirror provision requiring Member States to ensure that information held by EU notified bodies is made available at the request of the certificate holder, to a conformity assessment body established in the United Kingdom.

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.¹⁸ The IE/Ni Protocol is subject to periodic consent of the Northern

¹⁷ Article 40(d) of the Withdrawal Agreement.

¹⁸ 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.¹⁹

The IE/Ni Protocol makes certain provisions of EU 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.²⁰

The IE/Ni Protocol provides that Directive 2013/53/EU applies to and in the United Kingdom in respect of Northern Ireland.²¹

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:

- Recreational craft and personal watercraft placed on the market in Northern Ireland has to comply with Directive 2013/53/EU.
- Recreational craft and personal watercraft manufactured in Northern Ireland and shipped to the EU is not an imported product.
- Recreational craft and personal watercraft shipped from Great Britain to Northern Ireland is an imported product.
- The importer and the authorised representative may be established in Northern Ireland.
- Where provisions of Union law require a unique code indicating a Member State, it is to be indicated as “UK(NI)”.²²
- Certificates of conformity issued by and post-construction assessment identification codes referring to a Notified Body in the EU are valid in Northern Ireland.
- Certificates of conformity issued by and post-construction assessment identification codes referring to a Notified Body in Great Britain are not valid in Northern Ireland.

However, the IE/Ni Protocol excludes the possibility for the United Kingdom in respect of Northern Ireland to

¹⁹ Article 18 of the IE/Ni Protocol.

²⁰ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/Ni Protocol.

²¹ Article 5(4) of the IE/Ni Protocol and section 18 of annex 2 to that Protocol.

²² Article 7(2) of the IE/Ni Protocol. Technical constraints, usually linked to databases, may require the country code to be limited to two digits. In this case, a non-attributed combination of digits should be used.

- participate in the decision-making and decision-shaping of the Union;²³
- 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;²⁴
- invoke the country of origin principle or mutual recognition for products placed legally on the market in Northern Ireland, or for certificates issued or other activities performed by authorities or bodies established in the United Kingdom.²⁵

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

- Certificates of conformity issued by and post-construction assessment identification codes referring to Notified Bodies in Northern Ireland are valid only in Northern Ireland. These certificates and reports are not valid in the EU.²⁶ Where recreational craft and personal watercraft is certified by a Notified Body in Northern Ireland, the indication “UK(NI)” must be affixed next to the “CE” marking.²⁷ This distinct marking allows the identification of recreational craft and personal watercraft which can be legally placed on the market in Northern Ireland, but not in the EU.

The website of the Commission on EU rules on EU rules on the recreational craft sector (https://ec.europa.eu/growth/sectors/maritime/recreational-crafts_en) provides general information concerning Union legislation applicable to recreational craft and personal watercraft. These pages will be updated with further information, where necessary.

European Commission

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

²³ 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.

²⁴ Fifth subparagraph of Article 7(3) of the IE/NI Protocol.

²⁵ First subparagraph of Article 7(3) of the IE/NI Protocol.

²⁶ Fourth subparagraph of Article 7(3) of the IE/NI Protocol.

²⁷ Fourth subparagraph of Article 7(3) of the IE/NI Protocol.