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21 March 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF FIGHT AGAINST ILLEGAL LOGGING AND ASSOCIATED TRADE

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020. Until that date, EU 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, all operators who import timber and timber products from the United Kingdom, are advised to ensure that they comply with the prohibition to place on the market illegally harvested timber

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.

and timber products derived therefrom and with the due diligence obligations under Articles 4 and 6 of Regulation (EU) No 995/2010.

Please note:

This notice does not address:

- EU plant health rules;
- EU rules on endangered species;
- EU customs rules.

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.

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market⁶ and the licensing scheme under Council Regulation (EC) No 2173/2005 establishing a Forest Law Enforcement, Governance and Trade (FLEGT Regulation)⁷, as well as any related FLEGT Voluntary Partnership Agreements that the European Union has concluded with a third country⁸ no longer applies to the United Kingdom.⁹ This has in particular the following consequences:

1. DUE DILIGENCE REGARDING TIMBER AND TIMBER PRODUCTS PLACED ON THE EU MARKET

According to Articles 4 and 6 of Regulation (EU) No 995/2010, operators may not place illegally harvested timber or derived products on the EU market, and have due diligence obligations regarding timber and timber products they wish to place on the market. Operators are under the obligation to exercise due diligence on the basis of

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

⁶ OJ L 295, 12.11.2010, p. 23.

⁷ Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community, OJ L 347, 30.12.2005, p. 1.

⁸ Besides Indonesia, the only country issuing FLEGT licenses so far, the EU has concluded Voluntary Partnership Agreements with Ghana, Republic of Congo, Cameroon, Indonesia, the Central African Republic, Liberia, and Viet Nam.

⁹ Regarding the applicability of Regulations (EU) No 995/2010 and (EC) No 2173/2005 to Northern Ireland, see Part C of this notice.

a due diligence system described in Article 6 of Regulation (EU) No 995/2010 and thus exclude the placement on the internal market of timber, for which the risk of illegal harvest is non-negligible, and of products derived from such timber. After the end of the transition period, this obligation applies also to all those operators in the countries to which Regulation (EU) No 995/2010 applies, who import timber and timber products from the United Kingdom (i.e. who place timber coming from the United Kingdom on the EU market) - no matter where the timber was initially harvested.

2. MONITORING ORGANISATIONS

According to Article 8(2)(a) of Regulation (EU) No 995/2010, monitoring organisations have to be established within the Union. After the end of the transition period, the recognition as monitoring organisations of organisations established in the United Kingdom is no longer valid. They will not be in a position to carry out the tasks set out in Regulation (EU) No 995/2010.

3. LICENSING OF IMPORTS

Regulation (EC) No 2173/2005 sets up a licencing scheme for imports into the EU of timber and timber products from countries, which concluded a bilateral FLEGT Voluntary Partnership Agreements (VPA) with Union and have an operational FLEGT licensing scheme. According to Article 3 of Regulation (EU) No 995/2010, FLEGT licensed timber is considered as legally harvested within the meaning of Regulation (EU) No 995/2010 and thus no longer needs to undergo a due diligence check by operators.¹⁰ This exclusively refers to valid FLEGT licenses issued by the licensing authorities of third countries under VPAs concluded between the Union and third countries.¹¹ After the end of the transition period, this scheme, including the FLEGT VPAs, no longer applies to the United Kingdom.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

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.

¹⁰ At present, only Indonesia is covered by the FLEGT Regulation as per Commission Delegated Regulation (EU) 2016/1387 of 9 June 2016 amending Annexes I and III to Council Regulation (EC) No 2173/2005 following a Voluntary Partnership Agreement with Indonesia for a FLEGT licensing scheme for imports of timber into the European Union (C/2016/3438), OJ L 223, 18.8.2016, p. 1.

¹¹ Other licenses emitted on the basis of Agreements between third countries are not valid in the European Union.

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.¹²

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.¹³ “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.”¹⁴

Example: The due diligence obligation in Regulation (EU) No 995/2010 does not apply to a consignment of timber or timber products already lawfully placed on the market in the United Kingdom before the end of the transition period and made further available on the market in the EU after the end of the transition period.

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

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.¹⁵ 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.¹⁶

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.¹⁷

The IE/NI Protocol provides that Regulation (EU) No 995/2010 and Regulation (EC) No 2173/2005 apply to and in the United Kingdom in respect of Northern Ireland.¹⁸

¹² Article 42 of the Withdrawal Agreement.

¹³ Article 40(a) and (b) of the Withdrawal Agreement.

¹⁴ Article 40(c) of the Withdrawal Agreement.

¹⁵ Article 185 of the Withdrawal Agreement.

¹⁶ Article 18 of the IE/NI Protocol.

¹⁷ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/NI Protocol.

¹⁸ Article 5(4) of the IE/NI Protocol and section 26 of annex 2 to that 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:

- The movement of timber and timber products from Northern Ireland to the EU and *vice-versa* is not an import but an intra-EU movement for the purposes of Regulation (EU) No 995/2010 and Regulation (EC) No 2173/2005.
- The movement of timber and timber products from Great Britain or from a third country to Northern Ireland is an import for the purposes of Regulation (EU) No 995/2010 and Regulation (EC) No 2173/2005. This means that operators in Northern Ireland must comply with their obligations under Regulation (EU) No 995/2010 and Regulation (EC) No 2173/2005 as regards the placing of such timber and timber products on the market. More specifically, this means that
 - Operators in Northern Ireland will have to exercise due diligence under Regulation (EU) No 995/2010 in respect of such products.
 - Timber and timber products operators in Northern Ireland import from a FLEGT licensing country will have to be accompanied by FLEGT licenses issued by that country under the Voluntary Partnership Agreement with the European Union.
- A competent authority must be designated in respect of Northern Ireland under Regulation (EU) No 995/2010 and Regulation (EC) No 2173/2005.
- Monitoring organisations established in the EU can carry out the tasks under Regulation (EU) No 995/2010 in Northern Ireland.
- The establishment requirement for monitoring organisations is fulfilled for monitoring organisations established in Northern Ireland (see, however, below).

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;¹⁹
- invoke recognition, in the EU, of assessments by bodies established in the United Kingdom, subject to exceptions.²⁰

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

- Tasks under Regulation (EU) No 995/2010 carried out by monitoring organisations established in Northern Ireland are not valid in the EU; they are only valid in Northern Ireland.

¹⁹ 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.

²⁰ First subparagraph of Article 7(3) of the IE/Ni Protocol.

The webpages of the Commission on action against illegal logging (https://ec.europa.eu/environment/forests/timber_regulation.htm and <http://ec.europa.eu/environment/forests/flegt.htm>) provide for general information. These pages will be updated with further information, where necessary.

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