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23 January 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF MARKETING OF SEEDS AND OTHER PLANT REPRODUCTIVE PROPAGATING MATERIAL

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that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

Breeders are to ensure that entries in the Common Catalogue are accepted by an EU Member State in order for the varieties to be marketed in the EU after the end of the transition period. The interested parties are thus to submit the respective applications to the responsible official body of an EU Member State in a timely manner before that date, in order to ensure that those varieties are also inserted in a timely manner in the respective national catalogue(s) and included in the respective Common Catalogues.

Breeders are to ensure that varieties of fruit plant reproductive material, which are currently included only in the registry of United Kingdom, are accepted by an EU Member State, or varieties of ornamental propagating material, which are currently only included in a supplier's list in the United Kingdom, are accepted by a supplier in an EU Member States, in order for that material to be marketed in the EU after the end of the transition period. The interested parties are thus to submit the respective applications to the responsible official body or supplier of an EU Member State in a timely manner, to ensure that those varieties or that material are inserted in a timely manner in the national registry or suppliers list before the end of the transition period.

Distributors of plant reproductive material from the United Kingdom are to take account of EU import restrictions.

Please note:

This notice does not address EU rules on

- plant health (phytosanitary rules);
- protection of intellectual property rights of plant varieties; and
- genetically modified organisms.

For these aspects, other notices are in preparation or have been published.⁶

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the EU rules in the field of seeds and other plant reproductive propagating material⁷ (hereafter “EU PRM legislation”) will no longer apply in the United Kingdom.⁸ This has in particular the following consequences:

⁶ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

⁷ See annex.

⁸ Regarding the applicability of the EU PRM legislation to Northern Ireland, see Part C of this notice.

1. COMMON CATALOGUES

According to EU PRM legislation, varieties of fodder plant seed, cereal seed, beet seed, vegetable seed, vegetable propagating material, seed potatoes and seed of oil and fibre plants (agricultural and vegetable species) must be examined and accepted by at least one Member State and listed in the Common Catalogues of Directive 2002/53/EC or Directive 2002/55/EC to be allowed for marketing throughout the Union.

Varieties that have been included in the Common Catalogues by the United Kingdom only can no longer be marketed in the EU after the end of the transition period.

2. NATIONAL REGISTRIES, NATIONAL SUPPLIER LISTS

According to EU PRM legislation, varieties of vine propagating material and fruit propagating material may only be marketed throughout the Union once they are included in the national registry in one Member State or - in the case of Directive 98/56/EC on ornamental propagating material – at least in a suppliers list of a EU Member State.

Pursuant to Directive 1999/105/EC, forest reproductive material may only be marketed throughout the Union once the basic material is included in the national registry in one Member State.

Varieties that have been included only in the registry of the United Kingdom, or are included only in the list of a supplier in the United Kingdom, can no longer be marketed in the EU after the end of the transition period.

3. EXAMINATION RESULTS

Article 7(1) of Directives 2002/53/EC and 2002/55/EC require that the acceptance of a variety in the Common Catalogues or national registry be based on an official examination by an EU Member State competent authority. After the end of the transition period, for the variety to be included in the Common Catalogues or national registry, the examination results have to stem from examinations in an EU Member State.

Breeders are also to bear in mind that, in addition to examinations for DUS (Distinctness, Uniformity and Stability) where all Member States apply the same requirements, certain varieties will also need additional examinations for VCU (Value for Cultivation and Use) where the requirements of certain Member States might be different from the requirements of the United Kingdom. Breeders are thus to ensure that they obtain any examination reports stemming from the United Kingdom before the end of the transitional period and inscribe them in a national catalogue of an EU Member State.

4. IMPORTS

According to EU PRM legislation, it is not allowed to import seeds and other plant reproductive material into the EU from third countries, unless the third country is “listed” by the EU, in accordance with EU PRM legislation.

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.

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.⁹

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.¹⁰ “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.”¹¹

Example: An individual plant of a plant variety included in the registry of the United Kingdom sold from a UK producer to a UK distributor before the end of the transition period can still be imported into the EU on the basis of the registration in the United Kingdom.

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.¹² The IE/Ni Protocol is subject to periodic consent of the Northern

⁹ Article 42 of the Withdrawal Agreement.

¹⁰ Article 40(a) and (b) of the Withdrawal Agreement.

¹¹ Article 40(c) of the Withdrawal Agreement.

¹² 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.¹³

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.¹⁴

The IE/Ni Protocol provides that EU PRM legislation applies to and in the United Kingdom in respect of Northern Ireland.¹⁵

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:

- Plant reproductive material placed on the market in Northern Ireland has to comply with EU PRM legislation;
- Plant reproductive material originating from Northern Ireland and shipped to the EU is not imported plant reproductive material;
- Plant reproductive material shipped from Great Britain to Northern Ireland is an import under the EU PRM legislation (see above, section A);
- Any “listing” of the United Kingdom (see above, section A), would not include Northern Ireland.

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;¹⁶
- 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;¹⁷
- act as leading authority for assessments, examinations and authorisations;¹⁸

¹³ Article 18 of the IE/Ni Protocol.

¹⁴ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/Ni Protocol.

¹⁵ Article 5(4) of the IE/Ni Protocol and section 42 of annex 2 to the IE/Ni Protocol. A listing of Directives 66/401/EEC, 98/56/EC and 2008/72/EC in section 42 of annex 2 to the IE/Ni Protocol is being proposed by the Commission (Article 164(5)(d) of the Withdrawal Agreement).

¹⁶ 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.

¹⁷ Fifth subparagraph of Article 7(3) of the IE/Ni Protocol.

- invoke the country of origin principle or mutual recognition for products placed legally on the market in Northern Ireland.¹⁹

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

- Inclusion of plant reproductive material in the UK's national registry or in UK supplier's list according to EU PRM legislation does allow for marketing plant reproductive material in Northern Ireland only. The inclusion of plant reproductive material in the UK's national registry or in a UK supplier's list does not allow for marketing plant reproductive material in the EU.²⁰
- The inclusion of plant reproductive material in the national registry of an EU Member State or in the list of an EU supplier does allow for marketing plant reproductive material in Northern Ireland.
- The Common Catalogues established by Directives 2002/53/EC and 2002/55/EC cannot include seed varieties bred or examined in Northern Ireland and notified by the United Kingdom;

The website of the Commission on EU rules on Plant Reproductive Material (https://ec.europa.eu/food/plant/plant_propagation_material_en.) provides general information concerning Union legislation applicable to seeds and other plant reproductive propagating material. These pages will be updated with further information, where necessary.

European Commission
Directorate-General Health and Food Safety

¹⁸ Article 13(6) of the IE/NI Protocol.

¹⁹ First subparagraph of Article 7(3) of the IE/NI Protocol.

²⁰ Fourth subparagraph of Article 7(3) of the IE/NI Protocol.

Annex: EU rules in the field plant reproductive propagating material

- Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed;²¹
- Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed;²²
- Council Directive 68/193/EEC of 9 April 1968 on the marketing of material for the vegetative propagation of the vine;²³
- Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants;²⁴
- Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material;²⁵
- Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species;²⁶
- Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed;²⁷
- Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed;²⁸
- Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes;²⁹
- Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants;³⁰
- Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed;³¹

²¹ OJ 125, 11.7.1966, p. 2298.

²² OJ 125, 11.7.1966, p. 2309.

²³ OJ L 93, 17.4.1968, p. 15.

²⁴ OJ L 226, 13.8.1998, p. 16.

²⁵ OJ L 11, 15.1.2000, p. 17.

²⁶ OJ L 193, 20.7.2002, p. 1.

²⁷ OJ L 193, 20.7.2002, p. 12.

²⁸ OJ L 193, 20.7.2002, p. 33.

²⁹ OJ L 193, 20.7.2002, p. 60.

³⁰ OJ L 193, 20.7.2002, p. 74.

³¹ OJ L 205, 1.8.2008, p. 28.

- Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production.³²

³² OJ L 267, 8.10.2008, p. 8.