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dated 25 September 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF FERTILISERS

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.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

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.

- ensure that required tests are carried out by a laboratory approved by a Member State;
- ensure compliance with obligations for economic operators and adapt product marking and labelling, where necessary.

Please note:

This notice does not address fertilising products placed on the market based on national rules.

Furthermore, this notice does not address

- EU general chemicals law (e.g. REACH);
- EU sectorial chemicals law (e.g. EU rules on plant protection products);
- EU waste law.

For these aspects, other notices have been published.⁵

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers,⁶ no longer applies to the United Kingdom.⁷ This has in particular the following consequences:

1. OBLIGATIONS OF ECONOMIC OPERATORS

According to Article 2(x) of Regulation (EC) No 2003/2003, a manufacturer is the person responsible for placing an EC fertiliser⁸ on the EU market.⁹ The notion covers not only a producer, but also an importer.¹⁰

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

⁶ OJ L 304, 21.11.2003, p. 1. Regulation (EC) No 2003/2003 will be repealed with effect from 16 July 2022 by Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products, OJ L 170, 25.6.2019, p. 1. Pursuant to Article 52 of Regulation (EU) 2019/1009, products placed on the market before 16 July 2022 as EC fertilisers can continue to be made available on the market after that date.

⁷ Regarding the applicability of Regulation (EC) No 2003/2003 to Northern Ireland, see Part C of this notice.

⁸ An "EC fertiliser" is a fertiliser belonging to a type of fertilisers listed in Regulation (EC) No 2003/2003 and complying with that Regulation.

Regulation (EU) 2019/1009 applies to "EU fertilising product", which means a fertilising product which is CE marked when made available on the market (see Article 2, point (2)).

⁹ By contrast, a distributor who does not change the characteristics of the fertiliser shall not be deemed to be a manufacturer, Article 2(x) of Regulation (EC) No 2003/2003.

According to Article 4 of Regulation (EC) No 2003/2003, manufacturers of fertilisers must be established in the Union and take responsibility for the conformity of EC fertilisers with that Regulation. The manufacturer is also responsible for providing EC fertilisers with identification markings (Article 7 of Regulation (EC) No 2003/2003), ensuring traceability (Article 8 of Regulation (EC) No 2003/2003), and complying with the specific rules for ammonium nitrate fertilisers of high nitrogen content (Articles 26 and 27 of Regulation (EC) No 2003/2003).

After the end of the transition period, a manufacturer established in the United Kingdom will no longer be an economic operator established in the EU. As a consequence, an economic operator established in the EU and placing EC fertilisers coming from the United Kingdom on the EU market, who was until then considered as a distributor, will become an EU importer in relation to such products. This operator will therefore have to comply with the above-mentioned obligations for manufacturers.

2. LABELLING AND MARKINGS

According to Article 9(1)(a), 11th indent, of Regulation (EC) No 2003/2003, packages, labels and accompanying documents of fertilisers must bear the name or trade name and address of the manufacturer.

If, before the end of the transition period, the manufacturer was established in the United Kingdom, the marking of the manufacturer on the packages, labels and accompanying documents has to be changed accordingly.

3. APPROVED LABORATORIES

Pursuant to Article 27 of Regulation (EC) No 2003/2003, the manufacturer must ensure that an ammonium nitrate fertiliser of high nitrogen content placed on the market has passed the test of resistance to detonation described in sections 2, 3 (method 1, point 3) and 4 of Annex III of the Regulation. This test must be carried out by one of the approved laboratories referred to in Article 30(1) of the Regulation.¹¹

Manufacturers must submit the results of the test to the competent authority of the Member State concerned at least 5 days before placing the fertiliser on the market, or at least 5 days before the arrival of the fertiliser at the borders of the EU in the case of imports.

For ammonium nitrate fertilisers of high nitrogen content placed on the market after the end of the transition period, the test of resistance to detonation required under

¹⁰ Regulation (EU) 2019/1009 provides separate definitions for each economic operator (manufacturer, authorised representative, importer and distributor) in Article 2, points (11) to (15) and sets out their obligations in Articles 6 to 12.

¹¹ The list of approved laboratories is published here: http://ec.europa.eu/growth/sectors/chemicals/legislation_en

Article 27 of Regulation (EC) No 2003/2003 must have been carried out by a laboratory approved by a Member State.¹²

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.¹³

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.¹⁴ “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.”¹⁵

Example: An individual EC fertiliser sold by its UK-based manufacturer to a UK-based wholesaler before the end of the transition period can still be distributed further into the EU with no need for re-testing, re-labelling or re-marking.

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 “*Notice to stakeholders – withdrawal of the United Kingdom and EU rules in the field of industrial products*” of 13 March 2020.¹⁶

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

¹² Regulation (EU) 2019/1009 replaces the approved laboratories system with conformity assessment procedures requiring in some cases the intervention of notified bodies (see Articles 13 to 18, 20 to 36 and Annex IV).

¹³ Article 42 of the Withdrawal Agreement.

¹⁴ Article 40(a) and (b) of the Withdrawal Agreement.

¹⁵ Article 40(c) of the Withdrawal Agreement.

¹⁶ https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_industrial_products.pdf.

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 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 Regulation (EC) No 2003/2003 applies to and in the United Kingdom in respect of Northern Ireland.²⁰

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:

- A fertiliser complying with Regulation (EC) No 2003/2003 can be placed on the market in Northern Ireland as EC fertiliser.
- An EC fertiliser manufactured in Northern Ireland and shipped to the EU is not an imported product.
- An EC fertiliser shipped from Great Britain to Northern Ireland is an imported product.
- Test reports issued by a laboratory approved by a Member State are valid in Northern Ireland.
- Test reports issued by a laboratory in Great Britain approved by the United Kingdom are not valid in Northern Ireland. A laboratory in Northern Ireland, however, can continue to issue test reports in certain circumstances (see below).
- For EU fertilising products placed on the market as from 16 July 2022 pursuant to Regulation (EU) 2019/1009:
 - Certificates issued by a Notified Body in the EU will be valid in Northern Ireland.
 - Certificates issued by a conformity assessment body in Great Britain will not be valid in Northern Ireland. A conformity assessment body in Northern Ireland, however, will be able to issue certificates as a Notified Body in certain circumstances (see below).

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 23 of Annex 2 to that Protocol. Pursuant to Article 51 of Regulation (EU) 2019/1009, Regulation (EC) No 2003/2003 will be repealed with effect from 16 July 2022 and references to the repealed Regulation should be construed as references to Regulation (EU) 2019/1009. As from that date, in accordance with Article 13(3) of the IE/Ni Protocol, the reference to Regulation (EC) No 2003/2003 should therefore be read as referring to Regulation (EU) 2019/1009.

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
- 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.²³

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

- Test reports issued by a laboratory in Northern Ireland approved by the United Kingdom are valid only in Northern Ireland. These reports are not valid in the EU.²⁴
- For EU fertilising products placed on the market as from 16 July 2022 pursuant to Regulation (EU) 2019/1009: certificates of conformity issued by Notified Bodies in Northern Ireland will be valid only in Northern Ireland. These certificates will not be valid in the EU.²⁵ Where EU fertilising products are certified by a Notified Body in Northern Ireland, the indication “UK(NI)” must be affixed next to the “CE” marking.²⁶ This distinct marking allows the identification of EU fertilising products which can be legally placed on the market in Northern Ireland, but not in the EU.

The website of the Commission [on Chemical Legislation \(https://ec.europa.eu/growth/sectors/chemicals/legislation_en\)](https://ec.europa.eu/growth/sectors/chemicals/legislation_en) provides for general information concerning fertilisers. These pages will be updated with further information, where necessary.

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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.

²³ First subparagraph of Article 7(3) of the IE/Ni Protocol.

²⁴ Fourth subparagraph of Article 7(3) of the IE/Ni Protocol.

²⁵ Fourth subparagraph of Article 7(3) of the IE/Ni Protocol.

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