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dated 19 December 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF FLUORINATED GREENHOUSE GASES

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.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

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- 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.

- assess continued compliance with the quota system for placing hydrofluorocarbons on the EU market;
- ensure compliance with reporting and registration obligations for import, export and production of fluorinated greenhouse gases;
- ensure that annual verification reports are drawn up by an auditor accredited by an ETS accreditation body in the EU or by an auditor accredited to verify financial statements in accordance with the legislation of an EU Member State;
- ensure compliance with establishment requirements for only representatives;
- ensure that service companies and personnel hold certificates and training attestations issued in an EU Member State.

Please note:

This notice does not address

- the EU regulation on ozone depleting substances;
- EU rules on emission trading;
- EU chemicals legislation.

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, the EU rules in the field of fluorinated greenhouse gases, and in particular Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases⁶ will no longer apply to the United Kingdom.⁷ This has in particular the following consequences:

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

⁶ OJ L 150, 20.5.2014, p. 195.

⁷ Regarding the applicability of Regulation (EU) No 517/2014 to Northern Ireland, see Part C of this notice.

1. QUOTA ALLOCATION FOR HYDROFLUOROCARBONS

According to Regulation (EU) No 517/2014, the placing on the market of hydrofluorocarbons is limited through quotas allocated by the Commission for each producer and importer in accordance with Article 16(5) of that Regulation.⁸

After the end of the transition period, hydrofluorocarbons placed on the market of the United Kingdom are no longer within the scope of Regulation (EU) No 517/2014 and do no longer count towards the quota allocated by the Commission to producers and importers. Companies based in the United Kingdom will, just like any other non-EU company with a legal representative in the Union,⁹ continue to receive quotas for placing hydrofluorocarbons on the EU market, based on their historic market shares in the EU-27 market¹⁰ or based on a declaration of intent as regards the placing on the market of hydrofluorocarbons.¹¹

As part of its preparedness measures, the Commission collected data from companies established in the United Kingdom between 18 January and 18 May 2018 on their historic share of the EU-27 market. In addition, the EU vs. United Kingdom market share has been collected from all reporting companies for the reporting year 2018 and 2019, based on modified reporting rules.¹² These data will allow establishing reference values reflecting the EU-27 market in those years in order to allocate quota to all eligible companies on that basis for the years after the end of the transition period.

2. REPORTING ON FLUORINATED GREENHOUSE GASES PRODUCED, IMPORTED OR EXPORTED IN THE REPORTING PERIOD STARTING AFTER THE END OF THE TRANSITION PERIOD¹³

2.1. Fluorinated greenhouse gases and gases listed in Annex II produced, imported or exported

According to **Article 19(1) of Regulation (EU) No 517/2014**, producers, importers and exporters of fluorinated greenhouse gases and gases listed in Annex II have to report annually, by 31 March, certain data. This obligation

⁸ The quotas for incumbent companies for the period until 31 December 2020 are calculated on the basis of reference values set in Commission Implementing Decision (EU) 2017/1984 of 24 October 2017 determining, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases, reference values for the period 1 January 2018 to 31 December 2020 for each producer or importer which has lawfully placed on the market hydrofluorocarbons from 1 January 2015 as reported under that Regulation, OJ L 287, 4.11.2017, p. 4.

⁹ Article 16(5) of Regulation (EU) No 517/2014.

¹⁰ Article 16(3) of Regulation (EU) No 517/2014.

¹¹ Article 16(2),(4) of Regulation (EU) No 517/2014.

¹² Commission Implementing Regulation (EU) 2019/522 of 27 March 2019 amending Implementing Regulation (EU) No 1191/2014 as regards the reporting of data on production and on imports and exports of polyols containing hydrofluorocarbons pursuant to Article 19 of Regulation (EU) No 517/2014, OJ L 86, 28.3.2019, p. 37.

¹³ Regarding reporting obligations covering the last year of the transition period, see part B of this notice.

also applies to undertakings established in third countries. For the reporting on the years starting after the end of the transition period, the following applies:

- Undertakings established in the United Kingdom importing to or exporting from the EU fluorinated greenhouse gases and gases listed in Annex II are undertakings from a third country. These undertakings will have to report the relevant data required by Regulation (EU) No 517/2014 through an EU-based only representative.¹⁴
- Undertakings established in the EU have to report shipments from or to the United Kingdom as import to or export from the EU.

2.2. Fluorinated greenhouse gases and gases listed in Annex II contained in products or pre-charged equipment, placed on the EU market

According to **Article 19(4) of Regulation (EU) No 517/2014**, undertakings placing fluorinated greenhouse gases and gases listed in Annex II contained in products or equipment on the EU market have to report annually, by 31 March, certain data. For the reporting on the year starting after the end of the transition period, the following applies:

- Undertakings importing such goods into the United Kingdom will no longer report this data.
- Undertakings importing such goods into the EU from the United Kingdom will have to report such trade as import.

2.3. Fluorinated greenhouse gases and gases listed in Annex II destroyed/fluorinated greenhouse gases used as feedstock

According to **Article 19(2) and (3) of Regulation (EU) No 517/2014**, undertakings that destroyed or used a certain amount of fluorinated greenhouse gases as feedstock in the Union have to report this, annually, by 31 March, for the preceding calendar year. The use or destruction of fluorinated greenhouse gases in third countries falls outside the scope of that Regulation. For the reporting on the year starting after the end of the transition period, undertakings destroying or using any fluorinated greenhouse gases as feedstocks in the United Kingdom no longer have to report these activities.

3. REGISTRATION REQUIREMENT

Prior to carrying out the activities to be reported under Article 19 of Regulation (EU) No 517/2014, any undertaking must register on the website of the Commission for using the electronic reporting tool.¹⁵

¹⁴ See section A.5 of this notice.

¹⁵ Article 1(2) of Commission Implementing Regulation (EU) No 1191/2014 of 30 October 2014 determining the format and means for submitting the report referred to in Article 19 of Regulation

4. VERIFICATION REPORT, ACCREDITATION OF AUDITORS

According to Article 19(6) of Regulation (EU) No 517/2014, producers, importers and exporters of fluorinated greenhouse gases shall make available verification reports, on request, to the competent authority of the Member State concerned and to the Commission. These verification reports shall be drawn up by an auditor accredited pursuant to Directive 2003/87/EC or by an auditor accredited to verify financial statements in accordance with the legislation of the Member State concerned.

In addition, according to Article 19(5) of Regulation (EU) No 517/2014, each importer of pre-charged equipment shall submit a verification document issued by accredited auditors, in accordance with Article 14 of Regulation (EU) No 517/2014. According to Article 14(2) of Regulation (EU) No 517/2014, the auditor has to be accredited pursuant to Directive 2003/87/EC or accredited to verify financial statements in accordance with the legislation of the Member State concerned.

As regards auditors accredited pursuant to Directive 2003/87/EC, the United Kingdom Accreditation Service will cease to be a national accreditation body within the meaning and for the purposes of Regulation (EU) 2018/2067 and of Regulation (EC) No 765/2008 after the end of the transition period. Accordingly, its accreditation certificates will no longer be valid or recognised in the EU after the end of the transition period.

As a consequence, after the end of the transition period,

- auditors accredited by the United Kingdom Accreditation Service pursuant to Directive 2003/87/EC; and
- auditors accredited to verify financial statements in accordance with the legislation of the United Kingdom

can no longer draw up verification reports for submission according to Article 19(5) and (6) of Regulation (EU) No 517/2014.

5. “ONLY REPRESENTATIVE” IN CASE OF IMPORTS AND PRODUCTION

According to Article 16(5) of Regulation (EU) No 517/2014, the allocation of quota for the placing on the market of hydrofluorocarbons in the EU by a non-EU company requires an “only representative” established in the EU.

After the end of the transition period, hydrofluorocarbons placed on the EU market by a company established in the United Kingdom require an “only representative” established in the EU.

After the end of the transition period, representatives established in the United Kingdom are no longer considered as “only representatives” for the purpose of Regulation (EU) No 517/2014.

(EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases, OJ L 318, 5.11.2014, p. 5.

6. CERTIFIED PERSONS AND UNDERTAKINGS

According to Article 4(1) and (2) of Regulation (EU) No 517/2014, operators of certain equipment that contains fluorinated greenhouse gases shall ensure that this equipment is checked for leaks. According to the second subparagraph of Article 4(2), certain of these checks have to be carried out by certified persons.

According to Article 8(1) of Regulation (EU) No 517/2014, operators of certain stationary equipment or refrigeration units shall ensure the recovery of fluorinated greenhouse gases is carried out by natural persons holding a certificate.

According to Article 8(3) of Regulation (EU) No 517/2014, the recovery of fluorinated greenhouse gases from air-conditioning equipment in road vehicles falling within the scope of Directive 2006/40/EC shall be carried out by persons with a training attestation.

Pursuant to Article 10 of Regulation (EU) No 517/2014, EU Member States have to establish:

- certification programmes for undertakings carrying out installation, servicing, maintenance, repair or decommissioning of the equipment listed in points (a) to (d) of Article 4(2) for other parties;
- certification programmes for natural persons carrying out those activities; and
- training programmes for natural persons recovering fluorinated greenhouse gases from air-conditioning equipment in motor vehicles falling within the scope of Directive 2006/40/EC.

According to the second subparagraph of Article 10(10), the certificates and training attestations issued in one Member State are mutually recognised for activities carried out in other EU Member States.

After the end of the transition period, certificates and training attestations issued in the United Kingdom are no longer recognised for activities carried out in the EU.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

Article 96(3) of the Withdrawal Agreement provides that Article 19 of Regulation (EU) No 517/2014 continues to apply to and in the United Kingdom in respect of the reporting for the last year of the transition period.

According to Article 96(6)(b) of the Withdrawal Agreement, to the extent necessary to comply with Article 96(3), undertakings in the United Kingdom will continue to have access to the reporting tool based on the format set out in the Annex to Regulation (EU) No 1191/2014 for the purposes of managing and reporting on fluorinated greenhouse gases.

Thus, for the sole purpose of the reporting obligations set out in Article 19 of Regulation (EU) No 517/2014 regarding the last year of the transition period,

- undertakings established in the United Kingdom are considered as undertakings established in the EU;

- the relevant deadlines (31 March and 30 June 2021) apply.

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.¹⁶ 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.¹⁷

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.¹⁸

The IE/NI Protocol provides that Regulation (EU) No 517/2014 applies to and in the United Kingdom in respect of Northern Ireland.¹⁹

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 placing on the market and use in Northern Ireland of fluorinated greenhouse gases and gases listed in Annex II to Regulation (EU) No 517/2014, as well as of specific products and equipment containing, or whose functioning relies upon, such gases has to comply with Regulation (EU) No 517/2014;
- The placing on the market of hydrofluorocarbons on the market in Northern Ireland counts towards the quota established under Regulation (EU) No 517/2014; Also, the placing on the market in Northern Ireland of hydrofluorocarbons pre-charged in equipment referred to in Article 14 of that Regulation, must be accounted for within the quota system and documented by a declaration of conformity;
- Shipments from Northern Ireland to the EU are not an import for the purpose of Regulation (EU) No 517/2014;
- Shipments from the EU to Northern Ireland are not an export for the purpose of Regulation (EU) No 517/2014;

¹⁶ Article 185 of the Withdrawal Agreement.

¹⁷ Article 18 of the IE/NI Protocol.

¹⁸ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/NI Protocol.

¹⁹ Article 5(4) of the IE/NI Protocol and section 26 of annex 2 to that Protocol.

- Shipments from Great Britain or a third country to Northern Ireland are an import for the purpose of Regulation (EU) No 517/2014;
- Shipments from Northern Ireland to Great Britain²⁰ or a third country are an export for the purpose of Regulation (EU) No 517/2014;
- Establishment of an only representative in Northern Ireland fulfils the requirement to be established in the EU for the purpose of Regulation (EU) No 517/2014.

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
- invoke the country of origin principle or mutual recognition for bodies established in the United Kingdom.²² However, the IE/NI protocol provides for exceptions to this principle.²³

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

- Accreditation of auditors:
 - Auditors accredited by an accreditation body in the United Kingdom cannot draw up verification reports for submission according to Article 19(5) and (6) of Regulation (EU) No 517/2014. But auditors established in Northern Ireland, accredited by a national accreditation body in an EU Member State according to the provisions of Regulation (EU) 2018/2067 and of Regulation (EC) No 765/2008, can draw up verification reports for operators as long as the operators are established in Northern Ireland for submission according to Article 19(5) and (6) of Regulation (EU) No 517/2014. Auditors established in Northern Ireland, accredited by a national accreditation body in an EU Member State cannot draw up verification reports for operators established in the EU Member States.
 - Auditors accredited to verify financial statements in accordance with the legislation of the United Kingdom cannot draw up verification reports for submission according to Article 19(5) and (6) of Regulation (EU) No 517/2014.
- Certification of persons and undertakings:
 - Persons in Northern Ireland, certified by a certification programme established by the United Kingdom in respect of Northern Ireland can

²⁰ The obligations in relation to exports in Regulation (EU) No 517/2014 (registration and reporting) are required by international obligations of the Union (cf. Article 6(1) of the IE/NI protocol).

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

²³ Second and third subparagraph of Article 7(3) of the IE/NI Protocol.

carry out the activities referred to in Article 4(1) and (2) and Article 8(1) and (3) of Regulation (EU) No 517/2014;

- Persons in the EU cannot be certified by a certification programme established by the United Kingdom in respect of Northern Ireland.

The website of the Commission on the fluorinated greenhouse gases (https://ec.europa.eu/clima/policies/f-gas_en) provides general information in this regard. These pages will be updated with further information, where necessary.

European Commission
Directorate-General Climate Action