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dated 19 December 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU EMISSIONS TRADING SYSTEM (EU ETS)

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a ‘third country’.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.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.

Moreover, after the end of the transition period the United Kingdom will be a third country as regards the implementation and application of EU law in the EU Member States.

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).

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.

Advice to stakeholders:

To address the consequences set out in this notice, stakeholders are in particular advised the following:

Operators of stationary installations located in the United Kingdom and aircraft operators where the United Kingdom is the administering Member State should

- ensure that they receive any allowances allocated for free by the UK competent authority before the end of the transition period;
- ensure that their annual emission reports are verified by verifiers established in the EU and accredited by the national accreditation body of an EU Member State;
- if they want to continue holding emission allowances after 30 April 2021, ensure to open a trading account in the Union Registry administered by an EU Member State and move their assets to this account.

In addition, aircraft operators for which the United Kingdom is the administering Member State should

- ensure that emissions occurring after the end of the transition period from flights leaving the EU for the United Kingdom or arriving in the EU from the United Kingdom are excluded from their annual emission reports;
- take note of their new administering Member State indicated in the latest attribution list of aircraft operators published by the Commission, if their administering Member State is currently the United Kingdom.

Holders of trading accounts or person holding accounts in the Union Registry should ensure to open an account administered by an EU Member State and move their assets to this account, if they want to continue holding emission allowances after the end of the transition period.

Investment firms and credit institutions should ensure establishment in the EU if they want to continue participating in the auctions of allowances conducted in the EU.

Account holders in the UK Kyoto registry should ensure to move assets to accounts in other Kyoto registries.

Please note:

This notice does not address:

- aspects related to financial markets and market oversight;
- other aspects in relation to aviation, including market access, air safety, aviation security, etc.

For these aspects, other notices are in preparation or have been published.⁵

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the EU rules governing the EU ETS, and in particular Directive 2003/87/EC⁶, will no longer apply to the United Kingdom.⁷ This has in particular the following consequences:

1. SCOPE OF THE EU EMISSION TRADING SYSTEM

Directive 2003/87/EC applies to emissions from activities listed in its Annex I and greenhouse gases listed in its Annex II (cf. Article 2 of Directive 2003/87/EC). Annex I to Directive 2003/87/EC includes certain activities carried out in stationary installations as well as aviation.

1.1. Stationary installations

According to Directive 2003/87/EC, the EU ETS covers emissions from all stationary installations in an EU Member State that carry out activities listed in Annex I to that Directive and emit greenhouse gases listed in Annex II.

After the end of the transition period, the emissions from stationary installations in the United Kingdom are no longer within the scope of Union law and the EU ETS.

1.2. Aviation

While Directive 2003/87/EC generally applies to all ‘flights which arrive at or depart from an aerodrome situated in the territory of a Member State to which the Treaty applies’ (Article 3a and Annex I, point 6), it also provides for a derogation as regards ‘flights to and from aerodromes located in countries outside the EEA’ (Article 28a). This derogation applies to flights to and from countries with whom a linking agreement has not been reached.

After the end of the transition period, in the absence of a linking agreement being reached, the derogation from Directive 2003/87/EC applies to flights from the United Kingdom to the EU and *vice-versa*.

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

⁶ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union, OJ L 275, 25.10.2003, p. 32.

⁷ Regarding the applicability of the EU Emissions Trading System to Northern Ireland, see Part C of this notice.

2. ADMINISTERING MEMBER STATE FOR AIRCRAFT OPERATORS

To ensure the correct implementation of the EU ETS for aviation, Article 18a of Directive 2003/87/EC establishes the administering Member State for aircraft operators.

After the end of the transition period, the United Kingdom no longer acts as administering Member State. The Commission services will update the attribution list of aircraft operators set out in Commission Regulation (EC) No 748/2009⁸ in the context of the annual update⁹, to inform aircraft operators of the administering Member State.¹⁰

3. VERIFICATION REPORTS AND ACCREDITATION OF VERIFIERS

According to Article 14(3) of Directive 2003/87/EC, installation or aircraft operators have to monitor CO₂ emissions and report the verified emissions annually to the competent authority of the Member State where the respective installation is located or which acts as administering Member State. According to Article 15 of Directive 2003/87/EC, these reports shall be verified.¹¹

According to Chapter IV of Commission Implementing Regulation (EU) 2018/2067 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC¹² and Regulation (EC) No 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products¹³, a

⁸ Commission Regulation (EC) No 748/2009 of 5 August 2009 on the list of aircraft operators which performed an aviation activity listed in Annex I to Directive 2003/87/EC on or after 1 January 2006 specifying the administering Member State for each aircraft operator, OJ L 219, 22.8.2009, p. 1. On the date of publication of this notice, the most recent list is set out in Commission Regulation (EU) 2020/535 of 8 April 2020 amending Regulation (EC) No 748/2009 on the list of aircraft operators which performed an aviation activity listed in Annex I to Directive 2003/87/EC on or after 1 January 2006 specifying the administering Member State for each aircraft operator, OJ L 124, 21.4.2020, p. 1.

⁹ Article 18a(3)(b) of Directive 2003/87/EC.

¹⁰ This attribution is also relevant in the context of aviation security, since it establishes the ‘appropriate authority’ to designate air carriers operating carriage of cargo and mail into the Union from a third country airport. See Section 6.8.1.1.b. of the Annex to Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security (OJ L 299, 14.11.2015, p. 1) and the ‘*Notice to stakeholders - Withdrawal of the United Kingdom and EU rules in the field of aviation security and maritime security*’ (REV2, 28 April 2020), published here: https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en.

¹¹ Regarding reporting obligations covering the last year of the transition period, see Part B of this notice.

¹² Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council, OJ L 334, 31.12.2018, p. 94.

¹³ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products, OJ L 218, 13.8.2008, p. 30.

verifier issuing a verification report has to be established in the EU and accredited by a national accreditation body of an EU Member State in which it is established.¹⁴

The United Kingdom Accreditation Service will cease to be a national accreditation body within the meaning and for the purposes 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 pursuant to that Regulation after the end of the transition period.¹⁵

As a consequence, after the end of the transition period, verifiers accredited by the United Kingdom Accreditation Service can no longer issue verification reports under Directive 2003/87/EC.¹⁶

4. ACCOUNTS HELD IN THE UNION REGISTRY

According to Article 19 of Directive 2003/87/EC, emission allowances issued under the EU ETS are held in a Union Registry. The Union Registry keeps track of the ownership of allowances held in electronic accounts for stationary installations and for aircraft operators. The Union Registry also serves as the Kyoto Protocol registry of the EU and the Member States.¹⁷

Accounts in the Union Registry are administered by an EU Member State.

After the end of the transition period, subject to the exception under Section B below:

- the United Kingdom can no longer administer accounts in the Union Registry, and the Union Registry no longer serves as the Kyoto Protocol registry of the United Kingdom;
- accounts in the Union Registry administered by the United Kingdom and accounts in the Kyoto Protocol registry of the United Kingdom can no longer be accessed.

¹⁴ Exceptions from this rule are listed in Article 7(1) of Regulation (EC) No 765/2008.

¹⁵ See also Section A.3 of the ‘Notice to stakeholders – withdrawal of the United Kingdom and EU rules in the field of industrial products’ (REV2, 13 March 2020), published here: https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en.

¹⁶ See, however, Part B of this notice.

¹⁷ Article 10 of Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change, OJ L 165, 18.6.2013, p. 13.

5. ACCESS TO AUCTIONS AND MARKET OVERSIGHT

When it comes to access to EU auctions, according to Article 19 of Commission Regulation (EU) No 1031/2010, only persons established in the EU, operators and aircraft operators fulfil the requirements for admission to bid in EU auctions.

Due to the classification of emission allowances as financial instruments in Directive 2014/65/EU¹⁸, a number of financial market rules also apply to the market of emission allowances. Market participants, in particular investment firms and credit institutions, should take due note of the general framework for financial instruments.¹⁹

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

Article 96(2) of the Withdrawal Agreement provides that Article 12(2a) and (3) and Articles 14, 15 and 16 of Directive 2003/87/EC continue to apply to and in the United Kingdom in respect of greenhouse gases emitted during the last year of the transition period.

According to Article 96(6)(a) of the Withdrawal Agreement, after the end of the transition period, to the extent necessary to comply with the obligations arising from, *inter alia*, Article 96(2) and (5), the United Kingdom and operators in the United Kingdom will continue to have access to the Union Registry and to the United Kingdom's Kyoto Protocol Registry²⁰ established by Regulation (EU) No 389/2013.

Thus, for the sole purpose of ensuring compliance with these obligations which continue to apply with regard to emissions (within the scope of Directive 2003/87/EC) occurring during 2020:

- aircraft operators and installation operators established in the United Kingdom are considered as aircraft operators and installation operators established in the EU;
- the accounts in the Union Registry, necessary to complete these obligations, will continue to be administered by the United Kingdom;
- the relevant deadlines apply.

¹⁸ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349–496.

¹⁹ For this aspect, other notices are in preparation or have been published.

²⁰ Continued access to the United Kingdom's Kyoto Protocol registry is ensured only in case the Doha Amendment would enter into force by 31 December 2020. For the Doha Amendment to the Kyoto Protocol see at: <https://unfccc.int/process/the-kyoto-protocol/the-doha-amendment>.

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.²¹ 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.²²

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 an EU Member State.²³

The IE/NI Protocol provides that Directive 2003/87/EC applies to and in the United Kingdom in respect of Northern Ireland insofar as it applies to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity.²⁴

This means that references to the EU in Parts A and B of this notice have to be understood as including any stationary installations located in Northern Ireland which fall in the scope of Directive 2003/87/EC and generate electricity, whereas references to the United Kingdom have to be understood as referring only to Great Britain.

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

- Operators of stationary installations in Northern Ireland involved with the generation of electricity have to comply with the relevant obligations concerning the emission of greenhouse gases of Directive 2003/87/EC, including the surrender obligations set out in Article 12(3) and the monitoring and reporting obligations set out in Articles 14 and 15 of that Directive. There is no free allocation, as is the general case under the EU ETS for generation of electricity;²⁵
- Stationary installations in Northern Ireland generating electricity will continue having access to their accounts in the Union Registry under the same conditions as before and as operators with stationary installations in EU Member States (including the possibility to exchange international credits until the compliance deadline for 2020 emissions);
- The United Kingdom may only conduct auctions in respect of Northern Ireland on an EU regulated market in accordance with Commission Regulation (EU) No 1031/2010.

²¹ Article 185 of the Withdrawal Agreement.

²² Article 18 of the IE/NI Protocol.

²³ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/NI Protocol.

²⁴ Article 9 of the IE/NI Protocol and annex 4 to that Protocol.

²⁵ Art 10a (3) of Directive 2003/87/EC.

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;²⁶
- invoke the country of origin principle or mutual recognition for certificates issued by bodies established in the United Kingdom.²⁷

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

- Verifiers accredited by an accreditation body in the United Kingdom cannot draw up verification reports for submission according to Articles 14 and 15 of Directive 2003/87/EC. Verifiers 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 in relation to stationary installations in Northern Ireland for submission according to Articles 14 and 15 of Directive 2003/87/EC. Verifiers established in Northern Ireland, accredited by a national accreditation body in an EU Member State, cannot draw up verification reports in relation to stationary installations and aircraft operators in the EU.

The website of the Commission on the EU ETS (https://ec.europa.eu/clima/policies/ets_en) provides general information in this regard. These pages will be updated with further information, where necessary.

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²⁶ 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.

²⁷ First subparagraph of Article 7(3) of the IE/Ni Protocol.