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Rev1

NOTICE TO STAKEHOLDERS

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

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that as from 30 March 2019, 00:00h (CET) ('the withdrawal date')¹ the United Kingdom will be a 'third country'.²

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the uncertainties surrounding the ratification of the Withdrawal Agreement, all interested parties, and especially economic operators, are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.

Subject to the transition period provided for in the draft Withdrawal Agreement,³ as of the withdrawal date, the EU rules governing the EU Emission Trading System, and in particular 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 Union⁴ and Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry⁵, no longer apply to the United Kingdom. This has in particular the following consequences:

¹ In accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

² A third country is a country not member of the EU.

³ Cf. Part four of the draft *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, as agreed at negotiator's level on 14 November 2018 (https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-uk-eu-agreed-negotiators-level-14-november-2018-including-text-article-132_en)

⁴ OJ L 275, 25.10.2003, p. 32.

⁵ Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, OJ L 122, 3.5.2013, p. 1.

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 Emissions Trading System includes all stationary installations in an EU Member State that carry out activities listed in Annex I of Directive 2003/87/EC and emit greenhouse gases listed in Annex II of Directive 2003/87/EC.

As of the withdrawal date, stationary installations in the United Kingdom are no longer within the scope of Union law and the EU Emission Trading System.

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, of Directive 2003/87/EC), it also provides for a derogation from its core substantive obligations as regards “flights to and from aerodromes located in countries outside the EEA” (Article 28a of Directive 2003/87/EC).

As of the withdrawal date, the derogation from the EU Emission Trading System applies to flights from the United Kingdom to the EU and *vice-versa*.

2. ADMINISTERING MEMBER STATE FOR AIRCRAFT OPERATORS

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

As of the withdrawal date, 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 748/2009⁶ in the context of the annual update⁷, to inform aircraft operators of the administering Member State.^{8 9}

⁶ 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.

⁷ Article 18a(3)(b) of Directive 2003/87/EC.

⁸ See Annex 2 to Commission Communication "Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan", COM(2018)880, 13 November 2018.

3. VERIFICATION REPORT; ACCREDITATION OF VERIFIERS

According to Article 14(3) of Directive 2003/87/EC, installation or aircraft operators have to monitor and report CO₂ emissions annually to the competent authority. According to Article 15 of Directive 2003/87/EC, these reports shall be verified.

According to Article 44 and Annex II of Commission Implementing Regulation (EU) 2018/2067 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC¹⁰, a verifier issuing a verification report has to be accredited according to the provisions of that Regulation and of Regulation (EC) No 765/2008.¹¹

As of the withdrawal date, accreditations by the UK National Accreditation Body will no longer be valid in the EU.

As a consequence, as of the withdrawal date, verifiers accredited by the UK National Accreditation Body can no longer issue verification reports under Directive 2003/87/EC.

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 of the individual Member States.¹²

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

As of the withdrawal date, 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

⁹ This attribution is also relevant in the context of aviation security, since it establishes the "appropriate authority" to designate air carriers operating 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*" (REV1, 23 October 2018).

¹⁰ 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.

¹¹ 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.

¹² 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.

administered by the United Kingdom and accounts in the Kyoto Protocol registry of the United Kingdom can no longer be accessed as of the withdrawal date.

5. AUCTIONS, FREE ALLOCATION AND EXCHANGE OF INTERNATIONAL CREDITS

The EU ETS provides for auctioning by Member States¹³, free allocation of allowances by Member States¹⁴ and exchange of international credits by installation and aircraft operators.¹⁵

As of the withdrawal date, no more auctions by the United Kingdom, no more allocation of free allowances to the accounts administered by the United Kingdom can take place and no exchanges of international credits can be performed by installation and aircraft operators administered by the United Kingdom.

Stakeholders are reminded that from 1 January 2019 emission allowances auctioned or allocated by the United Kingdom will be identified by a country code.¹⁶ Emission allowances marked with a country code cannot be surrendered by any installation or aircraft operator.¹⁷ The marking of allowances auctioned or allocated by the United Kingdom will be lifted on the day following the one on which the ratification instruments concerning the Withdrawal Agreement are deposited.¹⁸

Moreover, according to Article 99(5) of Regulation (EU) No 389/2013, the Commission has the power to suspend, with regard to the United Kingdom, the free allocation, auctioning of allowances and the exchange of international credits. On this basis, as part of its contingency measures, the Commission has instructed the central administrator to suspend relevant processes for the United Kingdom from 1 January 2019 until the day following that on which the ratification instruments concerning the Withdrawal Agreement are deposited.¹⁹

¹³ Article 10 of Directive 2003/87/EC.

¹⁴ Article 10a of Directive 2003/87/EC.

¹⁵ Article 11a of Directive 2003/87/EC.

¹⁶ Article 41(4) of Regulation (EU) No 389/2013.

¹⁷ Article 67(4) of Regulation (EU) No 389/2013.

¹⁸ Commission Delegated Regulation (EU) .../... of 19 December 2018 amending Commission Regulation No 389/2013 of 2 May 2013 establishing a Union Registry (C(2018)8871 final) (https://ec.europa.eu/clima/policies/ets_en).

¹⁹ Commission Decision of 17 December 2018 on instructing the central administrator to temporarily suspend the acceptance by the European Union Transaction Log of relevant processes for the United Kingdom relating to free allocation, auctioning and the exchange of international credits (C(2018) 8707).

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.

European Commission
Directorate-General Climate Action