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NOTICE TO STAKEHOLDERS

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

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a ‘third country’.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that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 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 as of 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 as of 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 involved in the trade of excise goods are in particular advised to:

- get acquainted with new procedures and obligations in relation to excisable goods traded with the United Kingdom;
- close movements that are ongoing after the end of the transition period as rapidly as possible, and in any case before 31 May 2021;⁶ and
- where tax warehouses in the territory of EU are related only to Authorised Warehouse Keepers established in the United Kingdom, take all necessary measures to place them under the control of an authorised warehouse keeper established in an EU Member State.

A. LEGAL SITUATION AS OF THE END OF THE TRANSITION PERIOD

As of the end of the transition period, the EU rules on excise duties, and in particular Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty,⁷ no longer apply to the United Kingdom.⁸ This has in particular the following consequences:

1. IMPORTS INTO AND EXPORTS FROM THE EU

According to Directive 2008/118/EC, excise goods may be moved between EU Member States under duty suspension⁹ or after release for consumption ("duty paid").¹⁰ In the former case (duty suspension), registration and authorisation of Economic Operators are pre-requisite; moreover, the procedures are computer-based and supported by pan-European IT systems called EMCS¹¹ for movement control and SEED¹² for registering excise economic operators.

As of the end of the transition period, this regime no longer applies to movement of excise goods between the United Kingdom and the EU. From that moment movements of excise goods from the United Kingdom to the EU and vice-versa will become imports and exports respectively. This means the following:

- Entry of excise goods into the excise territory of the EU from the United Kingdom will constitute importation. UK economic operators can no longer use

⁶ This date is established by the Withdrawal Agreement (Articles 52, 53 and Part II of Annex IV to the Withdrawal Agreement).

⁷ OJ L9, 14.1.2009, p. 12.

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

⁹ Chapter IV of Directive 2008/118/EC.

¹⁰ Chapter V of Directive 2008/118/EC.

¹¹ Excise Movement and Control System

¹² System for Exchange of Excise Data

EMCS for movements into the EU. EU economic operators must use EMCS for the onward movement from the points of entry into the EU to the final destination ('indirect imports').¹³ Customs formalities will have to be completed before such an indirect import can begin.

- The departure of excise goods from the excise territory of the EU to the United Kingdom will constitute exportation. EMCS will no longer be applicable to movements of excise goods from the EU into the United Kingdom, and excise supervision ends at the place of exit from the EU. Movements of excise goods to the United Kingdom will therefore require an export declaration as well as an electronic administrative document (e-AD). EU economic operators must use EMCS for the movement from the point of dispatch to the point of exit ('indirect exports').¹⁴
- In terms of management of the EU excise system, as of the end of the transition period:
 - the registration in SEED of Economic Operators established in the United Kingdom and their authorisation will become invalid. Consequently, they will not be able to send or receive new e-ADs.
 - no new creation or update of registrations and authorisations of Economic Operators established in the United Kingdom will be possible.
 - authorisations of Tax Warehouse Keepers established in the United Kingdom will become invalid. Tax warehouses controlled by them will no longer be able to operate intra-EU cross-border movements of excise goods under duty suspension.
 - no SEED data will be shared with the UK. In particular:
 - SEED data will not be synchronised any longer with UK IT systems,¹⁵
 - the United Kingdom will have no access to SEED on WEB (SEED's human user interface, which allows reading and modifying SEED data).

¹³ "Indirect" imports in this context refer to excise movements that begin in one Member State and end in another. The use of EMCS and the common duty paid arrangements for the movement from a place of importation to a destination in the same Member State (direct import) may benefit from national simplifications, but customs formalities will still need to be followed. Duty paid arrangements for the indirect movement of excise goods will no longer be possible.

¹⁴ "Indirect" exports in this context refer to excise movements that begin in one Member State and end in another. The use of EMCS and the common duty paid arrangements where the movement from the place of dispatch to the place of exit from EU territory takes place in one Member State only (direct export) may benefit from national simplifications, but customs formalities will still need to be followed. Duty paid arrangements for the indirect movement of excise goods will no longer be possible.

¹⁵ This implies that as of the end of the transition period, the EU's and the UK's view of each other's Economic Operators data will be the "snapshot" at the time of the end of the transition period, when the latest data synchronisation will have occurred.

- no guarantees will be automatically mutually recognised between the United Kingdom and EU Member States;
- no exemptions will be automatically mutually recognised between the United Kingdom and EU Member States;
- no excise debts will be managed between the United Kingdom and EU Member States; and
- there will be no legal basis for calling upon guarantees held by UK consignors and/or consignees.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

1. ONGOING MOVEMENTS OF EXCISE GOODS AT THE END OF THE TRANSITION PERIOD

Article 52 of the Withdrawal Agreement provides that ‘ongoing movements’ of excise goods between the EU and the United Kingdom at the end of the transition period are dealt with as intra-EU cross-border movement of excise goods.

This means in particular the following for movements ongoing at the end of the transition period:

- any electronic Administrative Document (e-AD), Simplified Accompanying Administrative Document (SAAD) or fall-back excise document approved by the UK competent authority before the end of the transition period is still a valid proof of Union status for the goods¹⁶;
- any report of receipt, report of export, SAAD copy 3 or other excise document that certifies the end of an ongoing movement approved by the UK competent authority by 31 May 2021¹⁷ is still a valid proof of the end of the excise movement;
- any control report, event report or other document that impacts an ongoing movement (e.g. by certifying the destruction of the goods) approved by the UK competent authority by 31 May 2021 is still valid;
- all excise roles are kept for all UK customs offices in the Customs Office List until 31 May 2021;
- excise IT systems’ code lists will be shared with the United Kingdom until 31 May 2021.

¹⁶ While the Withdrawal Agreement covers these situations, excise goods entering the EU after 1 January 2021 will nevertheless be subject to customs formalities. An open EMCS movement or a duty paid document showing that the movement began before 1 January 2021 will act as a Proofs of Union Status and allow the goods to proceed without paying customs duty and the ongoing excise procedures to complete normally.

¹⁷ This date is established by the Withdrawal Agreement (Articles 52, 53 and Part II of Annex IV to the Withdrawal Agreement).

However, this also means that, as of the end of the transition period,

- no change of destination or split of an ongoing movement to or from the UK may be performed.
- no new intra-EU movement of excise goods to or from the UK may start; a corollary is that no new e-AD or SAAD may be assigned for such movements.

The arrangements for movements ongoing at the end of the transition period end on 31 May 2021.¹⁸ After that date, it will no longer be possible to close movements normally and any such goods will be subject to full import and export procedures.

This means that, for movements that were ongoing at the end of the transition period and have not ended on 31 May 2021, the following applies:

- these movements of excise goods from or to the United Kingdom will be regarded as movements from or to a third country with all applicable consequences (e.g. status of non-Union goods, applicable customs procedures, excise duty claims, or seizing of the goods in case of non-compliance);
- any e-AD, SAAD or fall-back excise document approved by the UK competent authority is no longer a valid proof of Union status for the importation of excise goods;
- any report of receipt, report of export, SAAD copy 3 or other excise document that certifies the end of an ongoing movement approved by the UK competent authority after 31 May 2021 will no longer be a valid proof of the end of this movement;
- any control report, event report or other document that impacts an ongoing excise movement (e.g. by certifying the destruction of the goods) approved by the UK competent authority after 31 May 2021 will no longer be valid;
- no electronic messages on excise movements can be exchanged between the UK and EU Member States via EU-managed communication platforms such as CCN; consequently, no EMCS message directly related to the real time supervision of excise movements¹⁹ may be exchanged between the UK and EU Member States;

¹⁸ Articles 52, 53 and Part II of Annex IV to the Withdrawal Agreement.

¹⁹ EMCS messages directly related to the real-time supervision of excise movements include: e-AD, reminder for excise movement, report of receipt, report of export, change of destination, notification of diverted e-AD, split, cancellation, alert, rejection, explanation on delay for delivery, explanation on reason for shortage, interruption, control report, and event report.

2. ADMINISTRATIVE ASSISTANCE AND RECOVERY

Article 99(2) of the Withdrawal Agreement provides for continued administrative cooperation (for four years after the end of the transition period) between the EU Member States and the United Kingdom in relation to movements that started before the end of the transition period.²⁰

Article 100 of the Withdrawal Agreement provides for continued recovery assistance (for five years after the end of the transition period) in relation to these movements.

3. STATISTICS AND AVAILABILITY MANAGEMENT

From 1 January 2021 until 31 May 2021 the United Kingdom will have access to excise trans-European IT systems' operational statistics provided by the central IT component CS/MISE, but only where the United Kingdom is the country of dispatch or the country of destination of an EMCS movement. Unavailability information provided by the central IT component CS/MISE, will also be available until 31 May 2021.

C. APPLICABLE RULES ON EXCISE FOR GOODS IN NORTHERN IRELAND AFTER THE END OF THE TRANSITION PERIOD

As from 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. It also provides that insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, it is assimilated to a Member State.²³

The IE/NI Protocol provides that EU excise rules apply to and in the United Kingdom in respect of Northern Ireland.²⁴

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.

²⁰ The records of such Economic Operators and authorisations will be kept in SEED for 4 years so that ongoing movements can be closed and EU Member States' auditors and other staff can access UK Economic Operators data.

²¹ Article 185 of the Withdrawal Agreement.

²² Article 18 of the IE/NI Protocol.

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

²⁴ Article 8 and Annex 3, Section 2 to the IE/NI Protocol.

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

- Transactions involving movements of goods between Northern Ireland and the other parts of the United Kingdom will be regarded as imports or exports for the purpose of EU rules on excise.
- Movements of excise goods between Northern Ireland and EU Member States will be treated as movements between Member States.
- Economic Operators established in Northern Ireland who wish to move excise goods to and from EU Member States under duty suspension will need to be registered and authorised in SEED.
- Economic Operators established in Northern Ireland, duly registered and authorised, must use the excise procedures and pan-European IT systems (e.g. Excise Movement Control System) when moving excise goods to and from EU Member States.
- The storage and movement of excise goods within Northern Ireland will be subject to Directive 2008/118/EC.
- The classification and taxation of excise goods will be subject to the applicable product specific Directives on excise structure and rates.²⁵

The table below summarises the Excise treatment linked to the different possible scenarios. The following acronyms are used for convenience.

- **EU MS:** the EU Member States
- **GB:** Great Britain i.e. the United Kingdom with the exception of Northern Ireland
- **NI:** Northern Ireland
- **Third country:** any non-EU country which is not the United Kingdom

Goods moving from to	Excise rules
GB to EU MS	Importation into the concerned EU MS
EU MS to GB	Exportation from the concerned EU MS
GB to NI	Importation into NI
NI to GB	Exportation from NI
NI to EU MS	Intra-EU cross-border movement
EU MS to NI	Intra-EU cross-border movement

²⁵ Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages, OJ L 316, 31.10.1992, p. 21; Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages, OJ L 316, 31.10.1992, p. 29; Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, OJ L 176, 5.7.2011, p. 24; Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity; OJ L 283, 31.10.2003, p. 51; Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene, OJ L 291, 6.12.1995, p. 46.

Third country to NI	Importation into NI
NI to third country	Exportation from NI

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

The website of the Commission on taxation and customs union (https://ec.europa.eu/taxation_customs/index_en) provides general information concerning the consequences of the United Kingdom withdrawal in the field of excise. These pages will be updated with further information, where necessary.

European Commission
Directorate-General Taxation and Customs Union

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.