



Brussels, 22 June 2020

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES ON INVASIVE ALIEN SPECIES

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that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 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,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 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, producers/exporters established in a

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.

third country, including the United Kingdom, of live plants and animals placed on the EU market are in particular advised to consult the list of invasive alien species of Union concern (the “Union list”): https://ec.europa.eu/environment/nature/invasivealien/list/index_en.htm). Species included on this list (including any parts, gametes, seeds, eggs or propagules that might survive and subsequently reproduce) cannot be brought into the territory of the Union, including transit under customs supervision, and are subject to other restrictions as well.

Please note:

This notice does not address:

- EU rules on animal health and welfare and public health related to the movement of live animals;
- EU rules in the field of plant health;
- EU rules on endangered species; and
- rules on accompanying pets.

For these aspects, other notices are in preparation or have been published.⁶

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species⁷ no longer applies in the United Kingdom.⁸ This has in particular the following consequences:

1. INTRODUCTION OF LIVE ANIMALS AND PLANTS INTO THE EU

According to Article 7 of Regulation (EU) No 1143/2014, it is prohibited to bring into the territory of the Union, including transit under customs supervision, and to transport to the Union (except for the transportation of species to facilities in the context of eradication) live specimens of any species included in the list of invasive alien species of Union concern (the “Union list”). This prohibition applies also to any parts, gametes, seeds, eggs or propagules that might survive and subsequently

⁶ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

⁷ OJ L 317, 4.11.2014, p.35.

⁸ Regarding the applicability of Regulation (EU) No 1143/2014 to Northern Ireland, see Part C of this notice.

reproduce. The prohibited species are listed in the Annex to the Implementing Regulation (EU) 2016/1141, as amended.⁹

A derogation from the above restrictions is possible under permits issued by the Member States' authorities for carrying out research activities on, or ex-situ conservation of, invasive alien species of Union concern, scientific production and subsequent medicinal use. In exceptional cases, for reasons of compelling public interest, permits may be issued for other activities but subject to a prior authorisation by the Commission.

A derogation also applies to owners of companion animal not kept for commercial purposes that belong to the invasive alien species included on the Union list until the end of the animals' natural life. The following conditions must be met: (a) the animals were kept before their inclusion on the Union list; (b) the animals are kept in contained holding and all appropriate measures are put in place to ensure that reproduction or escape are not possible.

2. EXIT OF LIVE ANIMALS AND PLANTS FROM THE EU

According to Article 7(d) of Regulation (EU) No 1143/2014, it is prohibited to transport from the Union (except for the transportation of species to facilities in the context of eradication) live specimens of any species included in the list of invasive alien species of Union concern (the "Union list"). This prohibition applies also to any parts, gametes, seeds, eggs or propagules that might survive and subsequently reproduce. The prohibited species are listed in the Annex to the Implementing Regulation (EU) 2016/1141, as amended.

The derogations under permits and for owners of companion animals as described above apply.

3. OFFICIAL CONTROLS AT IMPORT

According to Article 15 of Regulation (EU) No 1143/2014, categories of goods falling within the Combined Nomenclature codes to which a reference is made in the Union list are subject to official controls with a view to verify that (a) they are not on the Union list; or (b) they are covered by a valid permit. If such controls establish a non-compliance, placing of the goods under a customs procedure is to be suspended or the goods are to be detained. Furthermore, according to Article 13 of Regulation (EU) No 1143/2014, Member States may have in place other checks at Union borders with a view to prevent the unintentional introduction of invasive alien species of Union concern (e.g. as contaminants of other goods).

⁹ Commission Implementing Regulation (EU) 2016/1141 of 13 July 2016 adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No 1143/2014 of the European Parliament and of the Council, OJ L 189, 14.7.2016, p. 4. For a consolidated version of the list, see https://ec.europa.eu/environment/nature/invasivealien/docs/R_2016_1141_Union-list-2019-consolidation.pdf.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

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

Article 47(1) of the Withdrawal Agreement provides that, under the conditions set out therein, movements of goods ongoing at the end of the transition period are to be treated as intra-Union movements regarding importation and exportation licencing requirements in EU law.

Example: Live specimens of a species included in the list of invasive alien species of Union concern, the movement of which is ongoing between the EU and the United Kingdom at the end of the transition period can still enter the EU if

a) they are covered by a valid permit under Article 8 or 9 of Regulation (EU) No 1143/2014; or

b) the movement concerns transportation to facilities in the context of eradication.

2. REQUESTS FOR THE INCLUSION OF INVASIVE ALIEN SPECIES ON THE UNION LIST

Since the withdrawal of the United Kingdom, i.e. already during the transition period, the United Kingdom cannot submit to the Commission requests for the inclusion of invasive alien species on the Union list.¹⁰

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.¹¹ 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.¹²

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.¹³

The IE/Ni Protocol provides that Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of

¹⁰ Article 128(6) and point 12 of annex VII to the Withdrawal Agreement.

¹¹ Article 185 of the Withdrawal Agreement.

¹² Article 18 of the IE/Ni Protocol.

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

the introduction and spread of invasive alien species applies to and in the United Kingdom in respect of Northern Ireland.¹⁴

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 movement of goods from Northern Ireland to a third country is an exit for the purpose of Regulation (EU) No 1143/2014.
- The movement of goods from Northern Ireland to the EU is not an import but an intra-EU movement for the purpose of Regulation (EU) No 1143/2014.
- The movement of goods from a third country or from Great Britain to Northern Ireland is an import for the purpose of Regulation (EU) No 1143/2014, including for the purposes of official controls.
- The placing on the market and any other use in Northern Ireland of species on the Union list is prohibited, unless for activities covered by a valid permit. This restriction also applies for goods that are shipped from Great Britain to Northern Ireland.
- Regulation (EU) No 1143/2014 applies to the United Kingdom in respect of Northern Ireland, i.e.
 - With respect to Northern Ireland, the United Kingdom is to establish and adopt action plans to address the priority pathways of unintentional introduction and spread of invasive alien species of Union concern.
 - With respect to Northern Ireland, the United Kingdom is to establish a surveillance system of invasive alien species of Union concern and notify the Commission and inform the Member States of the introduction or presence of invasive alien species of Union concern.
 - With respect to Northern Ireland, the United Kingdom is to have in place effective management measures for those invasive alien species of Union concern, which have been found to be widely spread on its territory. Also appropriate restoration measures shall be carried out.
 - With respect to Northern Ireland, the United Kingdom is to lay down provisions on penalties applicable to infringements of this Regulation and in accordance with the polluter pays principle shall aim to recover the costs of the measures needed to prevent, minimise or mitigate the adverse impact of invasive alien species.
 - The reporting obligation in Article 24 of Regulation (EU) No 1143/2014 applies to the United Kingdom in respect of Northern Ireland.

¹⁴ Article 5(4) of the IE/Ni Protocol and section 26 of annex 2 to that Protocol.

According to Article 6(1) of the IE/Ni protocol, provisions of Union law made applicable by the Protocol which prohibit or restrict the exportation of goods shall only be applied to trade between Northern Ireland and other parts of the United Kingdom to the extent strictly required by any international obligations of the Union.

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

- Article 7(d) of Regulation (EU) No 1143/2014 does not apply to the export of an invasive alien species of Union concern from Northern Ireland to Great Britain.

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;¹⁵
- initiate objections, safeguard or arbitration procedures to the extent that they concern technical regulations, standards, assessments, registrations, certificates, approvals and authorisations issued or carried out by EU Member States;¹⁶
- act as leading authority for assessments, examinations and authorisations;¹⁷
- invoke mutual recognition in the EU of authorisations issued by authorities of the United Kingdom.¹⁸

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

- the United Kingdom in respect of Northern Ireland cannot object to any update of the list of invasive alien species of Union concern;
- the United Kingdom in respect of Northern Ireland cannot submit to the Commission requests for the inclusion of invasive alien species on the list of invasive alien species of Union concern as per Article 4(4) of Regulation (EU) No 1143/2014; and
- a permit under Article 8(2) of Regulation (EU) No 1143/2014 issued by the United Kingdom in respect of Northern Ireland is not recognised in an EU Member State.

The website of the Commission on invasive alien species (https://ec.europa.eu/environment/nature/invasivealien/index_en.htm) provides general

¹⁵ 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.

¹⁶ Fifth subparagraph of Article 7(3) of the IE/Ni Protocol.

¹⁷ Article 13(6) of the IE/Ni Protocol.

¹⁸ First subparagraph of Article 7(3) of the IE/Ni Protocol.

information concerning the applicable Union legislation. These pages will be updated with further information, where necessary.

European Commission
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