



Brussels, 5 June 2020  
REV1 – replaces the notice dated  
11 July 2019

## NOTICE TO STAKEHOLDERS

### WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF TRANSPORTABLE PRESSURE EQUIPMENT

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.<sup>1</sup> The Withdrawal Agreement<sup>2</sup> provides for a transition period ending on 31 December 2020.<sup>3</sup> Until that date, EU law in its entirety applies to and in the United Kingdom.<sup>4</sup>

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,<sup>5</sup> 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:**

- <sup>1</sup> A third country is a country not member of the EU.
- <sup>2</sup> 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”).
- <sup>3</sup> 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.
- <sup>4</sup> Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.
- <sup>5</sup> 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:

- Manufacturers of transportable pressure equipment are advised to ensure that certificates of conformity required under Directive 2010/35/EU are issued by an EU notified body, to ensure compliance with establishment requirements for authorised representatives and to adapt labelling as necessary; and
- Owners or operators of transportable pressure equipment are advised to ensure that certificates of reassessments of conformity as well as reports of periodic inspections, intermediate inspections and exceptional checks required under Directive 2010/35/EU are issued by an EU notified body.

## **A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD**

After the end of the transition period, the EU rules in the field of transportable pressure equipment, and in particular Directive 2010/35/EU of the European Parliament and of the Council of 16 June 2010 on transportable pressure equipment<sup>6</sup> and Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods<sup>7</sup> no longer apply to the United Kingdom.<sup>8</sup> This has in particular the following consequences:

### **1. TRANSPORTABLE PRESSURE EQUIPMENT PLACED ON THE UNION MARKET**

Directive 2010/35/EU provides for rules ensuring the safety of transportable pressure equipment made available on the EU market.

Regarding the need for a certificate issued by a Notified Body established in one of the EU Member States, the requirement for the authorised representative to be established within the EU and the identification of the importer, please refer to Part A of the “*Notice to stakeholders – withdrawal of the United Kingdom and EU rules in the field of industrial products*” of 13 March 2020.<sup>9</sup>

According to Article 12 of Directive 2010/35/EU, transportable pressure equipment in use is subject to periodic inspections, intermediate inspections and exceptional checks in accordance with the Annexes to Directive 2008/68/EC and Chapters 3 and 4 of Directive 2010/35/EU. In order to ensure the continuity of the free movement of transportable pressure equipment in use, after the end of the transition period, any required periodic inspections, intermediate inspections and exceptional checks will need to be performed by an EU Notified Body.

Article 13 of Directive 2010/35/EU provides that transportable pressure equipment manufactured and put into service before the date of implementation of Directive

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<sup>6</sup> OJ L 165, 30.6.2010, p. 1.

<sup>7</sup> OJ L 260, 30.9.2008, p. 13.

<sup>8</sup> Regarding the applicability of Directive 2010/35/EU to Northern Ireland, see Part C of this notice.

<sup>9</sup> [https://ec.europa.eu/info/sites/info/files/notice\\_to\\_stakeholders\\_industrial\\_products.pdf](https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_industrial_products.pdf).

1999/36/EC of 29 April 1999 on transportable pressure equipment<sup>10</sup> (repealed by Directive 2010/35/EU) requires a reassessment of conformity in accordance with the conformity reassessment procedures set out in Annex III to Directive 2010/35/EU. After the end of the transition period, the reassessment of conformity will need to be performed by an EU Notified Body.

Directive 2010/35/EU does not apply to transportable pressure equipment exclusively used for the transport of dangerous goods between the territory of the Union and that of third countries<sup>11</sup>, which is carried out in accordance with Article 4 of Directive 2008/68/EC (see Section A.2 below).

## **2. TRANSPORTABLE PRESSURE EQUIPMENT USED EXCLUSIVELY FOR THE TRANSPORT OF DANGEROUS GOODS BETWEEN EU MEMBER STATES AND THE UK AND VICE-VERSA**

Directive 2008/68/EC lays down uniform rules for the safe transport of dangerous goods both within the EU and between Member States and third countries. The annexes to Directive 2008/68/EC contain, *inter alia*, the technical requirements applicable to transportable pressure equipment, to which Directive 2010/35/EU refers.

Directive 2008/68/EC sets up a common regime covering all aspects of the inland transport of dangerous goods based on relevant international agreements, including in particular the European Agreement concerning the International Carriage of Dangerous Goods by Road (“ADR”), the Convention concerning International Carriage by Rail (COTIF), which lays down in its Appendix C - the Regulations concerning the International Carriage of Dangerous Goods by Rail (“RID”), and the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (“ADN”).

The majority of Member States as well as the United Kingdom are contracting parties to those international agreements (although the United Kingdom only to ADR and RID).

Pursuant to Article 4 of Directive 2008/68/EC, “*the transport of dangerous goods between Member States and third countries shall be authorised in so far as it complies with the requirements of the ADR, RID or ADN, unless otherwise indicated in the Annexes.*”

This means that transportable pressure equipment complying with the requirements of the ADR or RID can normally continue to be accepted, after the end of the transition period, for the international carriage of dangerous goods between the United Kingdom and Member States and vice-versa.<sup>12</sup>

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<sup>10</sup> OJ L 138, 1.6.1999, p. 20.

<sup>11</sup> Article 1(4) of Directive 2010/35/EU.

<sup>12</sup> Regarding the free movement of transportable pressure equipment *within* the EU, see Section A.1 above.

## B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

### 1. TRANSPORTABLE PRESSURE EQUIPMENT PLACED ON THE EU OR THE UK MARKET BEFORE THE END OF THE TRANSITION PERIOD

Article 41(1) of the Withdrawal Agreement provides that an existing and individually identifiable good lawfully placed on the market in the EU or the United Kingdom before the end of the transition period may be further made available on the market of the EU or of the United Kingdom and circulate between these two markets until it reaches its end-user.

The economic operator relying on that provision bears the burden of proof of demonstrating on the basis of any relevant document that the good was placed on the market in the EU or the United Kingdom before the end of the transition period.<sup>13</sup>

For the purposes of that provision, “placing on the market” means the first supply of a good for distribution, consumption or use on the market in the course of a commercial activity, whether in return for payment or free of charge.<sup>14</sup> “Supply of a good for distribution, consumption or use” means that “an existing and individually identifiable good, after the stage of manufacturing has taken place, is the subject matter of a written or verbal agreement between two or more legal or natural persons for the transfer of ownership, any other property right, or possession concerning the good in question, or is the subject matter of an offer to a legal or natural person or persons to conclude such an agreement.”<sup>15</sup> “Putting into service” means “the first use of a good within the Union or the United Kingdom by the end user for the purposes for which it was intended [...]”<sup>16</sup>

This means that transportable pressure equipment placed on the UK market according to this definition before the end of the transition period can still be made available (e.g. can continue to be supplied for distribution or use) and used in the EU after the end of the transition period, and vice-versa.

**Example:** Transportable pressure equipment sold by a UK-based manufacturer to a UK-based wholesaler (i.e. placed on the market) before the end of the transition period based on a certificate issued by a Notified Body established in the United Kingdom can still be distributed further and used in the EU after the end of the transition period on the basis of that certificate. This is without prejudice to the obligation to appoint a new authorised representative established in the EU, where the current one is UK-based, as set out under Section A.1 above.

For further information regarding the notion of placing on the market and the demonstration of proof of placing on the market, please refer to Part B of the

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<sup>13</sup> Article 42 of the Withdrawal Agreement.

<sup>14</sup> Article 40(a) and (b) of the Withdrawal Agreement.

<sup>15</sup> Article 40(c) of the Withdrawal Agreement.

<sup>16</sup> Article 40(d) of the Withdrawal Agreement.

“Notice to stakeholders – withdrawal of the United Kingdom and EU rules in the field of industrial products” of 13 March 2020.

## **2. TRANSFER OF INFORMATION FROM A UK BODY TO AN EU NOTIFIED BODY AND VICE-VERSA**

Article 46 of the Withdrawal Agreement lays down provisions to facilitate, if need be, the transfer of information related to conformity assessments between notified bodies established in the UK or in the EU in case of succession of notified bodies. According to Article 46(1), “the United Kingdom shall ensure that information held by a conformity assessment body established in the United Kingdom in relation to its activities as a notified body under Union law before the end of the transition period is made available at the request of the certificate holder, without delay, to a notified body established in a Member State as indicated by the certificate holder.” Article 46(2) contains a mirror provision requiring Member States to ensure that information held by EU notified bodies is made available at the request of the certificate holder, to a conformity assessment body established in the United Kingdom.

## **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.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup>

The IE/NI Protocol provides that Directive 2010/35/EU applies to and in the United Kingdom in respect of Northern Ireland.<sup>20</sup>

This means that references to the EU in Parts A and B of this Notice, insofar as they concern Directive 2010/35/EU, 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:

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<sup>17</sup> Article 185 of the Withdrawal Agreement.

<sup>18</sup> Article 18 of the IE/NI Protocol.

<sup>19</sup> Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/NI Protocol.

<sup>20</sup> Article 5(4) of the IE/NI Protocol and section 12 of Annex 2 to that Protocol.

- Transportable pressure equipment placed on the market in Northern Ireland has to comply with Directive 2010/35/EU;
- Transportable pressure equipment manufactured in Northern Ireland and shipped to the EU is not an imported product;
- Transportable pressure equipment shipped from Great Britain to Northern Ireland is an imported product;
- The importer and the authorised representative may be established in Northern Ireland.
- Certificates of conformity and of reassessment of conformity as well as reports of periodic inspections, intermediate inspections and exceptional checks issued by a Notified Body in the EU are valid in Northern Ireland, i.e. transportable pressure equipment can be placed on the market and used in Northern Ireland based on a certificate of conformity and of reassessment of conformity as well as reports of periodic inspections, intermediate inspections and exceptional checks issued by a Notified Body in the EU.
- Certificates of conformity and of reassessment of conformity as well as reports of periodic inspections, intermediate inspections and exceptional checks issued by a Notified Body in Great Britain are not valid in Northern Ireland, i.e. transportable pressure equipment cannot be placed on the market and used in Northern Ireland based on a certificate of conformity and of reassessment of conformity as well as reports of periodic inspections, intermediate inspections and exceptional checks issued by a Notified Body in 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;<sup>21</sup>
- initiate objections, safeguard or arbitration procedures to the extent that they concern regulations, standards, assessments, registrations, certificates, approvals and authorisations issued or carried out by EU Member States;<sup>22</sup>
- invoke the country of origin principle or mutual recognition for products placed legally on the market in Northern Ireland; or for certificates issued by bodies established in the United Kingdom,<sup>23</sup> subject to exceptions.

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

- Certificates of conformity and of reassessment of conformity as well as reports of periodic inspections, intermediate inspections and exceptional checks issued by Notified Bodies in Northern Ireland are valid only in Northern Ireland. These

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<sup>21</sup> 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.

<sup>22</sup> Fifth subparagraph of Article 7(3) of the IE/NI Protocol.

<sup>23</sup> First subparagraph of Article 7(3) of the IE/NI Protocol.

certificates and reports are not valid in the EU.<sup>24</sup> Where transportable pressure equipment is certified by a Notified Body in Northern Ireland, the indication “UK(NI)” must be affixed next to any conformity marking, logo or similar required by the applicable provisions of Directive 2010/35/EU, such as the “Pi” marking.<sup>25</sup> This distinct marking allows the identification of transportable pressure equipment which can be legally placed on the market in Northern Ireland, but not in the EU.

The website of the Commission on EU rules on EU rules on transport of dangerous goods ([https://ec.europa.eu/transport/road\\_safety/topics/dangerous\\_goods\\_en](https://ec.europa.eu/transport/road_safety/topics/dangerous_goods_en)) provides general information concerning Union legislation applicable to transportable pressure equipment. These pages will be updated with further information, where necessary.

European Commission  
Directorate-General for Mobility and Transport

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<sup>24</sup> Fourth subparagraph of Article 7(3) of the IE/NI Protocol.

<sup>25</sup> Fourth subparagraph of Article 7(3) of the IE/NI Protocol.