NOTICE TO STAKEHOLDERS
WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF
DUAL-USE EXPORT CONTROLS

On 16 September 2020, the European Commission, Directorate-General Trade, issued a notice to stakeholders on withdrawal of the UK and EU rules in the field of dual-use export controls. Whereas the transition period ends on 31 December 2020, persons trading dual-use items are in particular advised to take note of:
- legal situation applicable after the end of the transition period (Part A below);
- certain relevant separation provisions of the Withdrawal Agreement (Part B below);
- the rules applicable in Northern Ireland after the end of the transition period (Part C below).

A. Legal situation after the end of the transition period

After the end of the transition period, the Council Regulation 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items no longer apply to the UK. This has in particular the following consequences:

- Dual-use exports to the UK:
  o controls under the Regulation will apply in relation to exports to the UK;
- export licenses issued by the UK under the Regulation:
  o will no longer be valid for exports of dual-use items from the EU to third countries;
- intra-EU transfer licences to the UK issued before the end of the transition period:
  o former transfers of Annex IV items from the EU to the UK will constitute an export subject to authorization;
  o intra-EU transfer licences issued by the competent authority of an EU MS for transfers to the UK issued before the end of the transition period will become valid licences for exports to the United Kingdom after the end of the transition period, and until the validity of the licence expires.

B. Relevant separation provisions of the withdrawal agreement

- ongoing movements of dual use items:
  o under specific conditions¹, 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;

¹Article 47(1) of the Withdrawal Agreement.
- special fissile materials\(^2\) present on the territory of the UK at the end of the transition period:
  - will become the property of the persons or undertakings unlimited right of use and consumption.\(^3\) The export of this materials to a third country is to be authorized in accordance with the Regulation.

**C. Applicable rules in Northern Ireland after the end of the transition period**

In the Protocol on Ireland/Northern Ireland (IE/NI Protocol) the EU and the UK have agreed that Northern Ireland is treated as if it were a MS with regard to certain legislation\(^4\).

The IE/NI Protocol provides that the Regulation applies to and in the UK in respect of Northern Ireland (this means that references to the EU in Parts A and B of this notice have to be understood as including Northern Ireland).

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

- shipments of dual-use items from the EU to Northern Ireland, and *vice-versa*, are *intra-EU transfers* for the purpose of the Regulation;
- shipments of dual-use items from Northern Ireland to a third country or to Great Britain are *exports* for the purpose of Regulation. In that case, the UK designated authority is to act as competent authority for the purpose of the application of Regulation.

The IE/NI Protocol excludes the possibility for the UK in respect of Northern Ireland to:

- participate in the *decision-making* and decision-shaping of the Union;
- invoke *mutual recognition* of assessments and authorisations by the UK in respect of Northern Ireland.

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

- any authorisation issued by the UK in respect of Northern Ireland under the Regulation cannot be invoked for shipments of dual use items from a MS to a third country.

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\(^2\) I.e. material property of the Community according to Article 86 of the Euratom Treaty.

\(^3\) The notion of “property” in Article 86 of the Euratom Treaty is not to be confused with the concept of “property” in civil law (“sui generis” Euratom ownership of Special Fissile materials in the Euratom Community).

\(^4\) The 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.