



Brussels, 13 July 2020
REV1 – replaces the notice dated
8 February 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF STATUTORY AUDIT

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020. Until that date, EU law in its entirety applies to and in the United Kingdom.³

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership. 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 will be very different from the United Kingdom’s participation in the internal market.⁴

Moreover, after the end of the transition period the United Kingdom will be a third country as regards the implementation and application of EU law in the EU Member States.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation implications that the end of the transition period will have on their activities.

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 L29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

³ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

⁴ In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition.

Statutory auditors and audit firms are in particular advised to assess the consequences of the end of the transition period in view of this notice, duly inform their customers, and take appropriate action, where needed, including registration as a third country auditor or third country audit firm in the EU.

An *audit firm* approved in a Member State should carefully examine whether it still complies, after the end of the transition period, with the conditions set out in the Statutory Audit Directive, in particular in relation to voting rights and members of the administrative or management body of the *audit firm*. This is relevant in case some of its members are approved in the United Kingdom.

Please note: This notice does not address

- EU rules on conflict of laws and jurisdictions (“judicial cooperation in civil and commercial matters”);
- EU company law;
- EU rules on personal data protection.

For these aspects, other notices are in preparation or have been published.⁵

After the end of the transition, the EU rules in the field of statutory audit (in particular the Statutory Audit Directive⁶) no longer apply to the United Kingdom. This has in particular the following consequences:

1. ENTITLEMENT TO CARRY OUT STATUTORY AUDITS IN THE EU

After the end of the transition period, natural persons approved as auditors by the United Kingdom (*United Kingdom auditors*) will be considered *third country auditors* and they will no longer be considered *statutory auditors* for the purpose of the Statutory Audit Directive.⁷ Audit entities approved by the United Kingdom (*United Kingdom audit entities*) will be considered *third country audit entities* and will no longer be considered *audit firms* for the purpose of the Statutory Audit Directive. Neither *United Kingdom auditors* nor *United Kingdom audit entities* will be entitled to carry out statutory audits required by the law of a Member State in accordance with the Statutory Audit Directive.

⁵ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en.

⁶ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, OJ L 157, 9.6.2006, p. 87.

⁷ Under Article 44 of the Statutory Audit Directive, a *United Kingdom auditor* could seek, as a *third country auditor*, to be approved as a *statutory auditor* by a Member State subject however to, inter alia, reciprocity. The *third country auditors* approved under Article 44 of the Statutory Audit Directive are subject to supervision by the relevant Member State authorities.

2. REQUIREMENTS FOR AUDIT FIRMS (VOTING RIGHTS, MEMBERS OF THE ADMINISTRATIVE OR MANAGEMENT BODY)

According to Article 3(4) of the Statutory Audit Directive, an audit firm approved by an EU Member State has to comply *inter alia* with the following:

- a majority of the voting rights has to be held by audit firms approved in any Member State or natural persons who satisfy the conditions imposed by the Statutory Audit Directive for approval in the Member States; and
- a majority - up to a maximum of 75% - of the members of the administrative or management body have to be audit firms approved in any Member State or natural persons who satisfy the conditions imposed by the Statutory Audit Directive for approval in the Member States.

Members approved by the United Kingdom no longer count towards these requirements after the end of the transition period.

3. REGISTRATION OF THIRD-COUNTRY AUDITORS AND AUDIT ENTITIES

After the end of the transition period, a *United Kingdom auditor* or *United Kingdom audit entity* providing an audit report concerning the annual or consolidated accounts of a company incorporated outside the EU whose transferable securities are admitted to trading on a regulated market⁸ of an EU Member State will have to be registered in that Member State as *third country auditor* or *third country audit firm*⁹, in accordance with Article 45 of the Statutory Audit Directive.

Failing such registration, any such audit report will have no legal effect in the Member State concerned.

United Kingdom auditors or *United Kingdom audit entities* that will be registered after the transition period in accordance with Article 45 of the Statutory Audit Directive will be subject to the systems of public oversight, quality assurance and investigation and penalties of the Member State of registration (cf. Article 45(3) of the Statutory Audit Directive). Article 46 of the Statutory Audit Directive empowers the Commission to declare the UK system of public oversight equivalent.¹⁰ The consequences of such a decision would be that Member States could, on the basis of reciprocity, disapply the requirements of Article 45(3) of the Statutory Audit Directive, in part or in full. While the assessment of the United Kingdom's equivalence in this area is ongoing, the assessment has not been finalised. All stakeholders thus have to be informed and ready for a scenario with no equivalence.

⁸ Except for issuers of high value-denominated debt securities (cf. Article 45(1) of the Statutory Audit Directive).

⁹ Article 16(2) and 17(2) of the Statutory Audit Directive.

¹⁰ Article 46 of the Statutory Audit Directive.

4. OTHER ASPECTS

- **Statutory audit of consolidated accounts of undertakings in the EU that have subsidiaries in the United Kingdom:** In accordance with Article 27 (on statutory audits of consolidated financial statements) of the Statutory Audit Directive, the *statutory auditor* or *audit firm* approved in a Member State acting as group auditor of an undertaking in the EU will need to take into account, in respect of the audit of that undertaking's subsidiaries in the United Kingdom, that the relevant *United Kingdom auditor* or *United Kingdom audit entity* will be considered as *third-country auditor* or *third-country audit entity* for the purpose of the requirements of that Article (e.g. the audit work of the *United Kingdom auditor* or *United Kingdom audit entity* will be subject to evaluation and review by the group auditor).
- **Cooperation of EU statutory auditors and audit firms with competent authorities of the United Kingdom:** In accordance with Article 23(5), second subparagraph (on confidentiality and professional secrecy) of the Statutory Audit Directive, the *statutory auditor* or *audit firm* approved in a Member State that carries out the statutory audit of an undertaking in the EU which forms part of a group of undertakings whose parent undertaking is in the United Kingdom or of an undertaking in the EU which has issued securities in the United Kingdom may only transfer audit working papers or other documents related to the audit of the audited undertaking in the EU to the competent authorities of the United Kingdom under the conditions set out in Article 47 of the Statutory Audit Directive. In particular, this requires the agreement of the Member State concerned and the existence of reciprocity arrangements between the competent authorities, on the basis of an adequacy decision by the Commission. While the assessment of the United Kingdom's adequacy in this area is ongoing, the assessment has not been finalised. All stakeholders thus have to be informed and ready for a scenario with no adequacy.

The above is without prejudice to the possibility for the competent authority of a Member State to approve a third country auditor as statutory auditor in accordance with Article 44 of the Statutory Audit Directive.

The website of the Commission on auditing of companies' financial statements (https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/auditing-companies-financial-statements_en) provide for general information concerning statutory audits. These pages will be updated with further information, where necessary.

European Commission
Directorate-General for Financial Stability, Financial Services and Capital Markets
Union