



Brussels, 14 July 2020
REV1 – replaces the notice dated
27 April 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF INSTITUTIONS FOR OCCUPATIONAL RETIREMENT PROVISION

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.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 Member States.

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

Advice to stakeholders:

In view of this notice, institutions for occupational retirement provision (“IORPs”) are advised to assess the consequences of the end of the transition period, duly inform their EU members and beneficiaries, and take appropriate action in a timely fashion, which could include the transfer of activities to the EU.

¹ A third country is a country which is not a Member State 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.

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 period, Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision⁶ no longer applies to the United Kingdom. This has in particular the following consequences:

- After the end of the transition period, institutions for occupational retirement provision (“IORPs”) registered or authorised in the United Kingdom will no longer benefit from the registration or authorisation under Directive (EU) 2016/2341⁷ to provide services in the Union and will be treated as third-country undertakings, to which Directive (EU) 2016/2341 does not apply. This means that, after the end of the transition period, those IORPs will no longer be allowed to operate, on the basis of their current registration/authorisation as IORPs for members or beneficiaries whose relationship with the sponsoring undertaking is governed by the social and labour law relevant to the field of occupational pension schemes of a Member State (hereafter “EU members and beneficiaries”). The assets will be in the United Kingdom and members and beneficiaries will have to rely on UK national law to have access to their assets.
- After the end of the transition period, IORPs registered or authorised in the United Kingdom will have to comply, with regard to activities related to EU members and beneficiaries, with the rules of the host Member State applicable to activities of IORPs registered or authorised in a third country. These rules may require a registration or authorisation by the relevant competent authority of the host Member State in accordance with the applicable national rules. Such registration or authorisation does, however, not grant the right to conduct business across the EU Member States, but is limited to the Member State that has granted the registration or authorisation.
- Before the end of the transition period, IORPs registered or authorised in the United Kingdom which operate cross-border in the EU are advised to contact the competent authorities of the relevant host Member States to determine whether and under which conditions they might be allowed to continue⁷ their activities pursuant to the national

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

⁶ OJ L 354, 23.12.2016, p. 37.

⁷ Articles 9, 11 and 12 of Directive (EU) 2016/2341.

laws in the Member State(s) concerned. Depending on the outcome, these UK IORPs might have to take appropriate steps:

- If it is not possible to continue the cross-border operations into the relevant Member State(s), UK IORPs may decide to transfer their portfolio related to EU members and beneficiaries to a receiving IORP registered or authorised in the EU, in order to keep such members and beneficiaries under the EU IORP framework. Article 12 of Directive (EU) 2016/2341, which had to be transposed into national law by the Member States at the latest by 13 January 2019, provides for a transfer procedure. If a transfer is not carried out before the end of the transition period, the UK IORP will no longer be able to continue to operate the pension schemes of its EU members and beneficiaries, and the consequences for its EU members and beneficiaries are as described above.
- If the Member State(s) concerned allow(s) continued cross-border activities under national law, the UK IORPs would have to decide whether to rely on these rules or to transfer the portfolio.
- Sponsoring undertakings established in the EU that pay contributions to an IORP registered or authorised in the United Kingdom are advised to assess the conditions for the continuation of the relevant pension schemes on the basis of the national law of the Member State in which they are established. In any event, after the end of the transition period, such pension schemes will no longer benefit from the legal framework provided by Directive (EU) 2016/2341. If the host Member State does not allow the continued cross-border activities of the UK IORP, sponsoring undertakings will have to make sure that the pension schemes in question are transferred to an IORP registered or established in the EU. Sponsoring undertakings established in the United Kingdom that pay contributions to an IORP registered or authorised in the EU with regard to a pension scheme for members or beneficiaries whose relationship with the sponsoring undertaking is governed by EU social and labour law will be able to continue doing so under EU law⁸ and be subject to Directive (EU) 2016/2341.
- After the end of the transition period, members and beneficiaries whose relationship with the sponsoring undertaking of an EU IORP is governed by the social and labour law of the United Kingdom relevant to the field of occupational pension schemes ("UK members and beneficiaries")⁹ will no longer benefit from the legal framework set by Directive (EU) 2016/2341, even if the IORP is registered or authorised in the EU.¹⁰ Whether and under which regulatory framework the EU IORP is allowed to provide services to members and beneficiaries in a third country has to be assessed under the national rules applicable to the IORP.

⁸ Article 6(3) of Directive (EU) 2016/2341 does not specify a specific place of establishment for the sponsoring undertaking.

⁹ UK members and beneficiaries may reside in the United Kingdom or in the EU.

¹⁰ See Article 6(19) of Directive (EU) 2016/2341 on the definition of a cross-border activity.

- Service continuity: The loss of EU registration/authorisation may also affect the ability of IORPs registered or authorised in the United Kingdom to continue performing certain obligations and activities and ensure service continuity with regard to contracts concluded before the end of the transition period.¹¹ IORPs, undertakings sponsoring IORPs and other stakeholders are advised to assess the impact of the end of the transition period on their operations and contractual arrangements and, also in cooperation with the relevant national supervisors and with the European Insurance and Occupational Pensions Authority (EIOPA), to identify and mitigate compliance risks.
- According to Article 37(3) of Directive (EU) 2016/2341, IORP members and beneficiaries have to receive, within a reasonable time, any relevant information regarding changes to the pension scheme rules. This includes information on the impact of the end of the transition period on their rights and the provision of IORP services, since this may trigger changes to their pension scheme rules.

The website of the Commission on Insurance and Pensions (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/insurance-and-pensions_en) provide for general information concerning IORP activities. These pages will be updated with further information, where necessary.

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¹¹ As Directive (EU) 2016/2341 does not contain specific provisions on how to ensure that contracts can continue to be honoured, it is a matter determined by the national law of the host Member State.