



Brussels, 27 April 2018

## NOTICE TO STAKEHOLDERS

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

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that unless a ratified withdrawal agreement<sup>1</sup> establishes another date or the period is extended by the European Council in accordance with Article 50(3) of the Treaty on European Union, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date'). The United Kingdom will then become a 'third country'.<sup>2</sup>

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, Institutions for Occupational Retirement Provision ("IORPs"), IORP members and beneficiaries, undertakings sponsoring IORPs and other stakeholders are reminded of certain legal repercussions, which need to be considered when the United Kingdom becomes a third country.

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, the EU rules for IORPs, and in particular 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 provision<sup>3</sup> no longer apply to the United Kingdom. This has in particular the following consequences:

- As of the withdrawal date, IORPs registered or authorised in the United Kingdom will no longer benefit from the registration or authorisation under Directive (EU) 2016/2341<sup>4</sup> 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, as of the withdrawal date, 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 an EU-27

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<sup>1</sup> Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

<sup>2</sup> A third country is a country not member of the EU.

<sup>3</sup> OJ L 354, 23.12.2016, p. 37. This Directive will repeal Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10). It will have to be applied by Member States from 13 January 2019 at the latest.

<sup>4</sup> Articles 9, 11 and 12 of Directive (EU) 2016/2341.

Member State (hereafter "EU-27 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.

- As of the withdrawal date, IORPs registered or authorised in the United Kingdom will have to comply, with regard to activities related to EU-27 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 withdrawal date, IORPs registered or authorised in the UK which are active cross-border in the EU-27 should contact the competent authorities of the relevant host EU-27 Member States to determine whether and under which conditions they might be allowed to continue their activities pursuant to national law in this Member State. Depending on the outcome, they might have to take contingency measures:
  - If it is not possible to continue the cross-border operations into an EU-27 Member State, UK IORPs may decide to transfer their portfolio related to EU-27 members and beneficiaries to a receiving IORP registered or authorised in EU-27, in order to keep such members and beneficiaries under the EU IORP framework. Article 12 of Directive (EU) 2016/2341, which has to be transposed at the latest by 13 January 2019, provides for a transfer procedure.<sup>5</sup> If a transfer is not performed, the UK IORP will no longer be able to continue to operate the pension schemes of its EU-27 members and beneficiaries, and the consequences for its EU-27 members and beneficiaries are as described above.
  - If the Member State allows continued cross-border activities under its national law, the IORPs would have to decide whether to rely on these rules or to transfer the portfolio.
- Sponsoring undertakings established in the EU-27 that pay contributions to an IORP registered or authorised in the United Kingdom should assess the conditions for the continuation of the relevant schemes on the basis of the national law of the Member State in which they are established. In any event, as of the withdrawal date, 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 IORP in question is either transferred or that they find an alternative IORP. Sponsoring undertakings established in the United Kingdom that pay contributions to an IORP registered or authorised in the EU-27 with regard to a pension scheme for members or beneficiaries whose relationship with the sponsoring

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<sup>5</sup> As long as Member States have not transposed Directive (EU) 2016/2341, Directive 2003/41/EC applies. Directive 2003/41/EC does not provide for a transfer procedure. However, a transfer may be possible on the basis of an agreement between the authorities of the transferring and receiving IORPs. In this case, IORPs could therefore already initiate such a transfer.

undertaking is governed by EU-27 social and labour law will be able to continue doing so<sup>6</sup> and be subject to Directive (EU) 2016/2341.

- As of the withdrawal date, members and beneficiaries whose relationship with the sponsoring undertaking of an EU-27 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")<sup>7</sup> 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-27.<sup>8</sup> Whether and under which regulatory framework the EU-27 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.
- Contract 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 withdrawal date.<sup>9</sup> IORPs, undertakings sponsoring IORPs and other stakeholders should assess the impact of the withdrawal of the United Kingdom 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), 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 on their rights and the provision of IORP services emerging from the withdrawal of the United Kingdom from the EU, since the withdrawal 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](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.

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

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

<sup>7</sup> UK members and beneficiaries may reside in the United Kingdom or in the EU-27.

<sup>8</sup> See Article 6(19) of Directive (EU) 2016/2341 on the definition of a cross-border activity.

<sup>9</sup> 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.