



Brussels, 8 February 2018  
Rev1

## **NOTICE TO STAKEHOLDERS**

### **WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF BANKING AND PAYMENT SERVICES**

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, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').<sup>2</sup> The United Kingdom will then become a 'third country'.<sup>3</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, stakeholders are reminded of 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 in the field of banking and payment services, including in particular Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD)<sup>4</sup>, Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR)<sup>5</sup> and Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on

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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> Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

<sup>3</sup> A third country is a country not member of the EU.

<sup>4</sup> OJ L 176, 27.6.2013, p. 338.

<sup>5</sup> OJ L 176, 27.6.2013, p. 1.

payment services in the internal market (PSD)<sup>6</sup> will no longer apply to the United Kingdom. This has in particular the following consequences:

## 1. AUTHORISATIONS

- UK entities providing banking<sup>7</sup> and payment services,<sup>8</sup> as well as e-money issuing,<sup>9</sup> will no longer benefit from the authorisation<sup>10</sup> to provide those services and activities in the Union (they will lose the so-called "EU passport") and will be treated as third-country entities with regard to their possibility to establish branches<sup>11</sup> or agents in the Member States. This means that those entities will no longer be allowed to provide services in the EU on the basis of their current authorisations.
- Entities authorised by United Kingdom competent authorities which have established branches in other Member States will have to comply, as of the withdrawal date, with the rules of the host Member State applicable to branches of entities having their head office in a third country<sup>12</sup> including the requirement to be validly authorised by the relevant competent authority of the host Member State in accordance with these rules. This may imply the need to submit an application for authorisation as a branch or subsidiary and potentially result into changes for depositors, for instance where deposit guarantee arrangements would need to change. Payment institutions authorised by United Kingdom competent authorities, as of the withdrawal date, will not be allowed to provide payment services in the territory of the Union cross-border or through the use of branches located in the Member States.<sup>13</sup>
- Entities authorised by the competent authorities in the Union, including their branches, have to comply with the conditions of their authorisation on a continued basis.<sup>14</sup> Where entities authorised by a competent authority in the EU have established branches in the United Kingdom, these branches will have to comply with the scope

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<sup>6</sup> OJ L 337, 23.12.2015, p. 35.

<sup>7</sup> See Article 8(1) CRD as well as Annex I of the CRD. Several activities listed in Annex I CRD are also covered by Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFID II/MIFIR). This notice is without prejudice to any consideration on the framework for investment services and stakeholders should also refer to the "Notice to Stakeholders – Withdrawal of the United Kingdom and EU rules in the field of Markets in Financial Instruments".

<sup>8</sup> Articles 1, 2 and Annex I of Directive (EU) 2015/2366.

<sup>9</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

<sup>10</sup> Articles 39 of Directive 2013/36/EU and 11(9) of Directive (EU) 2015/2366.

<sup>11</sup> Articles 17 of Directive 2013/36/EU and 19(5) of Directive (EU) 2015/2366.

<sup>12</sup> Article 47 of Directive 2013/36/EU, Article 15 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (DGSD), Article 1(1)(a) of Directive (EU) 2015/2366, and 8 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

<sup>13</sup> Articles 1(1), 11(1) and 37(1) of Directive (EU) 2015/2366.

<sup>14</sup> Articles 18(c) of Directive 2013/36/EU and 13(c) of Directive (EU) 2015/2366.

of the authorisation granted to the entities of which they are an integral legal part. This includes compliance with regard to their programme of operations and structural organisation<sup>15</sup> and the requirement that the effective exercise of supervisory functions is not prevented by difficulties involved in the enforcement of the laws, regulations or administrative provisions of the third country.<sup>16</sup> The services covered by the scope of the authorisation, including services provided by any branches of the authorised entity located in a third country, will continue to be subject to the supervisory powers of the competent authority which has granted the authorisation, including in particular the power to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution.<sup>17</sup> The services provided by these branches will as well be subject to the relevant requirements which are set out in the EU legal framework.<sup>18</sup>

## 2. ARRANGEMENTS AND EXPOSURES

- Arrangements which may affect the ability of entities authorised in the EU to have an autonomous risk management and control framework, and sufficient operational resilience, including trading and hedging capabilities, in crisis will have to be assessed<sup>19</sup> by the competent authority which has granted the authorisation. The assessment will e.g. consider whether, as of the withdrawal date, entities authorised by a competent authority in the EU are allowed to continue to rely on outsourcing<sup>20</sup> or supervisory arrangements<sup>21</sup>, exemptions from the application of large exposures<sup>22</sup> or risk mitigation requirements<sup>23</sup> involving counterparties established in the United Kingdom – including parent institutions or other institutions of the same group.
- The prudential treatment of exposures to third parties established in the United Kingdom<sup>24</sup> will also be affected as of the withdrawal date. This is without prejudice to any equivalence decision that may be adopted by the EU in relation to specific

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<sup>15</sup> Articles 10 of Directive 2013/36/EU and 11(4) of Directive (EU) 2015/2366.

<sup>16</sup> Article 11(8) of Directive (EU) 2015/2366.

<sup>17</sup> Article 104(1)(e) of Directive 2013/36/EU and 11(5) of Directive (EU) 2015/2366.

<sup>18</sup> See "Notice to Stakeholders – Withdrawal of the United Kingdom and EU rules in the field of Markets in Financial Instruments".

<sup>19</sup> This may imply the need to submit new applications for the respective treatments.

<sup>20</sup> Article 11(8) and 19 of Directive (EU) 2015/2366 and article 8 of Directive 2009/110/EC.

<sup>21</sup> Articles 127 of Directive 2013/36/EU; Articles 2(1)(44), 7 and 32 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

<sup>22</sup> Articles 400(2)(c) of Regulation (EU) N°575/2013, Articles 12 and 19 of Directive 2014/59/EU, and Article 5(1)(a)(i) of Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements.

<sup>23</sup> Article 11 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR).

<sup>24</sup> See e.g. Articles 107, 114, 115, 116, 132, 142, 143(1), 151(4) and (9), 283, 312(2), 363 of Regulation (EU) No 575/2013.

prudential treatment referred to in the CRD.<sup>25</sup> Similarly, in the resolution framework, as of the withdrawal date, the assessment of the eligibility of liabilities for the minimum requirement for own funds and eligible liabilities may be affected for those liabilities issued under UK law.<sup>26</sup>

### 3. CONTRACTS

- Contract continuity for relationships between parties established in the Union and in the United Kingdom will be affected by the loss of the single passport, as this will impair the ability of UK based entities to continue performing certain obligations and activities and ensure service continuity with regard to contracts concluded before the withdrawal date. As of the withdrawal date, the EU rules on conflicts of laws and jurisdictions will no longer apply to the United Kingdom. Where contracts<sup>27</sup> are governed by the law of the United Kingdom, or contain a choice of law or an agreement in favour of the jurisdiction of a court in the United Kingdom, parties to those contracts should carefully assess the impact of the withdrawal of the United Kingdom on the validity and enforceability of those contracts and mitigate any risks, including any risks to their clients.

The website of the Commission on Banking and Finance ([https://ec.europa.eu/info/business-economy-euro/banking-and-finance\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance_en)) provides for general information concerning banking and payment services. 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>25</sup> See Articles 107, 114, 115, 116 and 142 of Regulation (EU) No 575/2013.

<sup>26</sup> See Articles 45 and 55 of Directive 2014/59/EU. See also Opinion of the European Banking Authority on issues related to the departure of the United Kingdom from the European Union (EBA/OP/2017/12), Part IV Resolution and deposit guarantee schemes, page 16 and ff.

<sup>27</sup> E.g. contracts supporting issuances of eligible liabilities under Article 55 of Directive 2014/59/EU.