



Brussels, 11 July 2019
REV 1 - replaces the notice
published on 21 November 2017

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES ON COMPANY LAW

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 (TEU). Following a request by the United Kingdom, the European Council (Article 50) agreed on 11 April 2019¹ to extend further² the period provided for in Article 50(3) TEU until 31 October 2019.³ This means that the United Kingdom will be, as of 1 November 2019 ('the withdrawal date') a 'third country'.^{4 5}

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

In view of the uncertainties surrounding the ratification of the Withdrawal Agreement,⁶ all interested parties, and especially economic operators, are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.

¹ European Council Decision (EU) 2019/584, OJ L 101, 11.4.2019, p. 1.

² Following a request by the United Kingdom, the European Council had decided a first extension on 22 March 2019 (European Council Decision (EU) 2019/476, OJ L 80 I, 22.3.2019, p. 1).

³ On 11 April 2019, following a second request for an extension by the United Kingdom, the European Council also decided that the decision to extend until 31 October 2019 would cease to apply on 31 May 2019 if the United Kingdom had not held elections to the European Parliament and had not ratified the Withdrawal Agreement by 22 May 2019. As the United Kingdom had not ratified the Withdrawal Agreement by 22 May 2019, it held European elections on 23 May 2019.

⁴ A third country is a country not member of the EU.

⁵ In addition, if the Withdrawal Agreement is ratified by both parties before that date, the withdrawal takes place on the first day of the month following the completion of the ratification procedures.

⁶ 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 C 144 I, 25.4.2019, p. 1.

Subject to the transition period provided for in the Withdrawal Agreement,⁷ as of the withdrawal date the EU rules in the field of company law no longer apply to the United Kingdom. This has in particular the following consequences:

Please note: This notice does not address

- **EU antitrust law and EU merger law (please note that the withdrawal of the United Kingdom has no impact on the applicability of EU antitrust rules and EU merger control rules if the jurisdictional criteria are fulfilled);⁸**
- **European international insolvency law.⁹**

1. COMPANIES INCORPORATED IN THE UNITED KINGDOM

The freedom of establishment, set out in Article 54 of the Treaty on the Functioning of the European Union (TFEU) ensures *inter alia* the recognition, throughout the Union, of a company incorporated in one Member State.

As of the withdrawal date, companies incorporated in the United Kingdom will be third country companies and therefore not automatically be recognised under Article 54 TFEU by the Member States (in accordance with the case-law of the Court of Justice). Member States will not be obliged to recognise the legal personality (and thus the limited liability) of companies, which are incorporated in the United Kingdom, but have the central administration or the principal place of business in the EU-27 Member States. UK incorporated companies may be recognised in accordance with each Member State's national law (private international law rules concerning companies and the subsequently applicable substantive company law), or international treaties. As a consequence, depending on the applicable national or international law rules, such companies might not have a legal standing in the EU and shareholders might be personally liable for the debts of the company.

Where **branches of a UK incorporated company are located in EU-27 Member States**, they will be branches of third country companies and accordingly the rules relevant to branches of third country companies will apply.

2. EU COMPANY LAW

Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law,¹⁰ provides for rules on *inter alia*

⁷ It is recalled that, in order for the transition period to apply, the Withdrawal Agreement has to be ratified by the EU and the United Kingdom.

⁸ For these matters, please consult the “*Notice to stakeholders - Withdrawal of the United Kingdom and EU competition law*” (https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en).

⁹ For these matters, please consult the Questions and Answers document “*Questions and answers related to the United Kingdom's withdrawal from the European Union in the field of civil justice and private international law*” (https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en).

¹⁰ OJ L 169, 30.6.2017, p. 46.

incorporation¹¹, capital maintenance and alteration.¹² Directive (EU) 2017/1132 applies to limited liability companies incorporated in accordance with national laws of the Member States. As of the withdrawal date, these rules no longer apply to the United Kingdom. Consequently, stakeholders, including employees, creditors and investors dealing with UK companies cannot rely on these EU rules. This means that, for example, EU rules on compulsory disclosure of certain company information in the business registers (such as documents and particulars related to instruments of constitution, appointment, termination of office and particulars of persons representing a company, the winding-up of a company or a change of the registered office) will no longer apply with regard to UK companies.

3. CROSS-BORDER MERGERS

Directive (EU) 2017/1132 also provides for procedural rules for cross border mergers of limited liability companies. These rules apply to limited liability companies governed by national laws of the Member States and listed in Annex I to that Directive.¹³

As of the withdrawal date, these rules no longer apply to the United Kingdom.¹⁴ Where a cross border merger involving a company incorporated in the United Kingdom is pending on the withdrawal date, (national) rules for mergers with companies established in third countries apply to the merger as of the withdrawal date.

4. SHAREHOLDER RIGHTS AND ENGAGEMENT

Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies¹⁵ provides for rules in relation to the exercise of certain shareholder rights, transparency obligations, and share-ownership responsibilities (i.e. monitoring of the investee company, voting, etc.). Directive 2007/36/EC applies to companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State.¹⁶ As of the withdrawal date, the EU rules on shareholder rights and engagement no longer apply to companies which have their registered office in the United Kingdom or which are only listed on a stock exchange in the United Kingdom.

¹¹ Chapter II of Title I of Directive (EU) 2017/1132.

¹² Chapter IV of Title I of Directive (EU) 2017/1132.

¹³ Article 87(1) of Directive (EU) 2017/1132.

¹⁴ The reference, in Annex I of Directive (EU) 2017/1132, to company forms in the United Kingdom becomes obsolete.

¹⁵ OJ L 184, 14.7.2007, p. 17.

¹⁶ Article 1(1) of Directive 2007/36/EC.

Commission Recommendations 2005/162/EC¹⁷ and 2004/913/EC¹⁸ address the **independence of board members and the remuneration of directors**. They provide for recommendations regarding the independence of board members from the company and the controlling shareholder, the creation of board committees on nomination, remuneration and audit and regarding remuneration of directors in listed companies. The recommendations apply to companies listed on EU regulated markets.¹⁹ As of the withdrawal date, these recommendations no longer apply to UK companies or to companies which are (only) listed on a UK stock exchange.

5. TAKEOVER BIDS

Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids²⁰ sets rules for takeover bids where all or some of the securities are traded on a regulated market in one or more Member States.²¹ As of the withdrawal date, where the securities are traded in the United Kingdom, this Directive no longer applies. Where a takeover bid is pending on the withdrawal date, national rules for takeover bid will apply as of the withdrawal date.

6. BUSINESS REGISTERS INTERCONNECTION SYSTEM (BRIS)

Member States' business registers are interconnected via a European central platform²² through the business registers interconnection system (BRIS) and publicly accessible through the European e-Justice Portal.²³ As of the withdrawal date, information in the United Kingdom company register is no longer exchanged via BRIS nor accessible through the European e-Justice Portal.

According to Articles 36 and 37 of Directive (EU) 2017/1132, Member States business registers have to provide certain information in relation to companies in a third country (e.g. changes to the companies in a third country with a branch in EU-27; mergers involving at least one EU company and one third country company). However, this information is not exchanged with other Member States through BRIS. Thus, as of the withdrawal date, while EU-27 Member States business registers will provide some information in relation to companies in the United Kingdom, this information is not part of the information exchange through BRIS.

¹⁷ Commission Recommendation 2005/162/EC of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board, OJ L 52, 25.2.2005, p. 51.

¹⁸ Commission Recommendation 2004/913/EC of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies, OJ L 385, 29.12.2004, p. 55.

¹⁹ Sections 1.1. and 2.1. of Recommendation 2005/162/EC, sections 1.1. and 2.2. of Recommendation 2004/913/EC.

²⁰ OJ L 142, 30.4.2004, p. 12.

²¹ Article 1(1) of Directive 2004/25/EC.

²² Article 22 of Directive (EU) 2017/1132.

²³ https://e-justice.europa.eu/content_business_registers_at_european_level-105-en.do.

7. EUROPEAN COMPANY FORMS

- The **European Company (SE)**²⁴ has to have its registered office in the EU, in the same Member State as their head office.²⁵ As of the withdrawal date, SEs that have their registered office in the United Kingdom no longer enjoy the status of an SE. The recognition of such companies by an EU-27 Member State would only be possible on the same basis as other UK incorporated companies (see above, section 1 of this notice).

According to Article 2 of Regulation (EC) No 2157/2001, SEs can be created by companies or other legal bodies formed in an EU Member State, with their registered and head offices within the EU. As of the withdrawal date, the UK incorporated companies will not be able to participate in the formation of an SE. SEs that have their registered office in the EU-27 at the time of withdrawal will preserve their legal status, even if they were formed, before the withdrawal date, by an UK company. The same applies with regard to subsidiary SEs.²⁶

- The **European Economic Interest Grouping (EEIG)**²⁷ has to be registered in an EU Member State.²⁸ As of the withdrawal date, EEIGs registered in the United Kingdom no longer enjoy the status of an EEIG.

According to Article 4 of Regulation (EEC) No 2137/85, EEIGs can consist only of companies or other legal bodies formed in an EU Member State, with their registered or statutory office and central administration in the EU, or of natural persons carrying out services in the EU. Where UK incorporated companies or other UK legal bodies are members of an EEIG, and where natural persons carry out services only in the United Kingdom, these will cease to belong to an EEIG as of the withdrawal date

- The **European Cooperative Society (SCE)**²⁹ has to be set up within the territory of the EU³⁰ and the registered office has to be in the same EU Member State as the head office.³¹ As of the withdrawal date, SCEs registered in the United Kingdom will no longer enjoy the status of an SCE.

Article 2 of Regulation (EC) No 1435/2003 sets out the requirement for EU

²⁴ Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), OJ L 294, 10.11.2001, p. 1.

²⁵ Article 7 of Regulation (EC) No 2157/2001.

²⁶ Article 2(3) of Regulation (EC) No 2157/2001.

²⁷ Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), OJ L 199, 31.7.1985, p. 1.

²⁸ Article 6 of Regulation (EEC) No 2137/85.

²⁹ Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE), OJ L 207, 18.8.2003, p. 1.

³⁰ Article 1(1) of Regulation (EC) No 1435/2003.

³¹ Article 6 of Regulation (EC) No 1435/2003.

residence of natural persons, and EU establishment for legal persons forming an SCE. Compliance of SCEs with these requirements has to continue following the withdrawal of the United Kingdom. Where the requirements set out in Article 2 of Regulation (EC) No 1435/2003 cease to be fulfilled as of the withdrawal date, the SCE ceases to enjoy the status of an SCE.

The websites of the Commission on company law http://ec.europa.eu/justice/civil/company-law/index_en.htm and on the European Cooperative Society (https://ec.europa.eu/growth/sectors/social-economy/cooperatives/european-cooperative-society_en) provide general information. These pages will be updated with further information, where necessary.

European Commission
Directorate-General Justice and Consumers
Directorate-General Internal Market, Industry, Entrepreneurship and SMEs