



## EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP AND SMES

DIRECTORATE-GENERAL FOR TRADE

DIRECTORATE-GENERAL EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION

DIRECTORATE-GENERAL MIGRATION AND HOME AFFAIRS

Brussels, 28 June 2019

### NOTICE TO STAKEHOLDERS

#### **WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES ON THE PROVISION OF SERVICES AND POSTING OF WORKERS**

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. Following a request by the United Kingdom, the European Council (Article 50) agreed on 11 April 2019<sup>1</sup> to extend further<sup>2</sup> the period provided for in Article 50(3) TEU until 31 October 2019.<sup>3</sup> This means that the United Kingdom will be, as of 1 November 2019 ('the withdrawal date'), a 'third country'.<sup>4 5</sup>

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

In view of the uncertainties surrounding the ratification of the Withdrawal Agreement, 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.

Subject to the transition period provided for in the Withdrawal Agreement,<sup>6</sup> as of the withdrawal date the EU rules on the provision of services as well as the provisions on the posting of workers, and in particular Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework

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

<sup>2</sup> 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 80I, 22.3.2019, p. 1).

<sup>3</sup> 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.

<sup>4</sup> A third country is a country not member of the EU.

<sup>5</sup> 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.

<sup>6</sup> Cf. Part four of the 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).

of the provision of services,<sup>7</sup> no longer apply to the United Kingdom. This has in particular the following consequences:

**Please note: this notice does not address sectorial EU legislation on the provision of services, such as EU legislation on financial services, transport services, digital services, and business services. On these matters, specific “notices to stakeholders” are available here: [https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices\\_en](https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en).**

**Moreover, this notice does not address:**

- **EU company law;**<sup>8</sup>
- **the right to reside in the EU-27 of UK nationals lawfully residing in the EU-27 at the time of the withdrawal of the United Kingdom,**<sup>9</sup> as well as general immigration law in the EU;
- **entry conditions for short-term stays in the EU;**<sup>10</sup>
- **the recognition of professional qualifications when providing services in the EU;**<sup>11</sup>
- **indirect taxation (value added tax – VAT) of services supplied in the EU.**<sup>12</sup>

## **1. FREEDOM TO PROVIDE SERVICES**

The freedom to provide services, as set out in Article 56 of the Treaty on the Functioning of the European Union (TFEU), applies to

- legal persons established in an EU Member State other than that of the legal and natural person for whom the services are intended; or
- natural persons who are nationals of an EU Member State (“EU nationals”) residing in an EU Member State other than that of the legal and natural person for whom the services are intended.<sup>13</sup>

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<sup>7</sup> OJ L 18, 21.1.1997, p. 1.

<sup>8</sup> See the “*Notice to stakeholders - Withdrawal of the United Kingdom and EU rules in the field of EU company law*” ([https://ec.europa.eu/info/sites/info/files/file\\_import/company\\_law\\_en.pdf](https://ec.europa.eu/info/sites/info/files/file_import/company_law_en.pdf)).

<sup>9</sup> See the overview on national law in relation to the residence rights drawn up by Commission services ([https://ec.europa.eu/info/brexit/brexit-preparedness/residence-rights-uk-nationals-eu-member-states\\_en](https://ec.europa.eu/info/brexit/brexit-preparedness/residence-rights-uk-nationals-eu-member-states_en)).

<sup>10</sup> See the “*Notice on travelling between the EU and the United Kingdom following withdrawal of the United Kingdom from the EU*” ([https://ec.europa.eu/info/sites/info/files/file\\_import/travelling\\_en.pdf](https://ec.europa.eu/info/sites/info/files/file_import/travelling_en.pdf)).

<sup>11</sup> See the “*Notice to stakeholders – Withdrawal of the United Kingdom and EU rules in the field of regulated professions and the recognition of professional qualifications*” ([https://ec.europa.eu/info/sites/info/files/file\\_import/professional\\_qualifications\\_en.pdf](https://ec.europa.eu/info/sites/info/files/file_import/professional_qualifications_en.pdf)).

<sup>12</sup> See the “*Notice to stakeholder - Withdrawal of the United Kingdom and EU rules in the field of value added tax*” ([https://ec.europa.eu/info/sites/info/files/vat\\_en.pdf](https://ec.europa.eu/info/sites/info/files/vat_en.pdf)).

As of the withdrawal date, the following (legal and natural) persons no longer benefit from the freedom to provide services in the EU, as set out in Article 56 TFEU:

- legal persons established in the United Kingdom, unless the legal person has an establishment also in the EU-27 (see below);
- UK nationals and EU-27 nationals residing in the United Kingdom; and
- UK nationals residing in an EU-27 Member State.

Rather, as of the withdrawal date, those legal and natural persons will only be able to provide services in an EU-27 Member State under the conditions set out by the law of such Member State, taking into account the market access commitments and qualifications made by the EU in the framework of the General Agreement on Trade in Services (GATS).<sup>14</sup>

Moreover, according to the first paragraph of Article 54 TFEU, legal persons established in the EU-27 owned by UK nationals and having their registered office, central administration or principal place of business in the EU-27 will benefit from the freedom to provide services in the EU-27.

## 2. POSTING OF WORKERS IN THE FRAMEWORK OF THE PROVISION OF SERVICES

Directive 96/71/EC provides for a legal framework that applies to undertakings established in an EU Member State, which post workers to another EU Member State.

As of the withdrawal date, Directive 96/71/EC no longer applies to

- EU-27 undertakings sending (“posting”) workers to the United Kingdom; and
- UK undertakings sending (“posting”) workers to the EU-27.

Rather, in these cases, as of the withdrawal date the following applies:

- **national law of the EU-27 Member States**, taking into account also the commitments and qualifications made by the EU and the UK in the framework of the **GATS** in relation to the temporary presence of certain categories of natural persons in the EU-27 to supply services;<sup>15</sup>
- Article 1(4) of Directive 96/71/EC, which provides that Member States **must not give more favourable treatment to undertakings** established in a third

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<sup>13</sup> Paragraph 2 of Article 56 TFEU provides the possibility for the co-legislators to extend the provisions of the TFEU’s chapter on services to nationals of a third country who provide services and who are established within the Union. However, this possibility has not been used so far.

<sup>14</sup> The commitments and qualifications are accessible here: [https://www.wto.org/english/tratop\\_e/serv\\_e/serv\\_commitments\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/serv_commitments_e.htm)

<sup>15</sup> The commitments and qualifications are accessible here: [https://www.wto.org/english/tratop\\_e/serv\\_e/serv\\_commitments\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/serv_commitments_e.htm)

country than to undertakings established in the EU. As of the withdrawal date, Member States must therefore ensure that workers sent (“posted”) to their territory by undertakings established in the United Kingdom are granted at least the terms and conditions of employment applicable to workers posted to that Member State by an undertaking established in the EU;

- As regards the specific case of **intra-corporate transfers**, Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer<sup>16</sup> will become relevant for UK companies: The Directive harmonizes the conditions for entry, stay and intra-EU mobility of third-country national workers being posted by a group of undertakings based outside the EU to an entity of the same group based on the EU territory. The Directive covers stays of up to 3 years for managers and specialists and up to 1 year for trainees.

Directive 96/71/EC continues to apply in the event that an EU-27 company posts a UK national who is legally residing and working in an EU-27 Member State to another EU-27 Member State, without prejudice to national laws relating to the entry, residence and access to employment of third-country workers to the extent that these laws comply with EU law.<sup>17</sup> According to the *Van der Elst* case-law of the CJEU,<sup>18</sup> it constitutes a restriction of the freedom to provide services by a Member State (host country) to make third-country workers who are regularly and habitually employed by a service provider established in another Member State and who are posted to the first Member State subject to administrative formalities, such as the obligation to obtain a work permit. Such a restriction complies with the freedom to provide services only if it is justified on the basis of a legitimate public interest and proportionate.

The websites of the Commission on EU trade policy (<http://ec.europa.eu/trade/>), the posting of workers (<https://ec.europa.eu/social/main.jsp?catId=471>) and intra-corporate transfer ([https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/work\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/work_en)) provide more general information. These pages will be updated with further information, where necessary.

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<sup>16</sup> OJ L 157, 27.5.2014, p. 1. This Directive does not apply to Ireland, nor to Denmark.

<sup>17</sup> Cf. Recital 20 of Directive 96/71/EC.

<sup>18</sup> Judgments in cases *Van der Elst* C-43/93 and *Commission v Luxembourg* C-445/03. See also *Commission v Germany* C-244/04.