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REV2 – replaces the notice (REV1) dated
8 February 2018

NOTICE TO STAKEHOLDERS

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

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.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 agreement will be concluded and will enter into force at the end of the transition period. In any event, such 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 become a third country as regards the implementation and application of EU law in the EU 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, financial service providers in the field of banking, payment and/or e-money services, and in particular those offering or receiving cross-border services to or from the United Kingdom, are advised to assess the impact of the end of the transition

¹ A third country is a country not member 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.

period, and to duly inform their EU customers and regulators or public authorities. They are also advised to take appropriate action in a timely fashion, which could include the transfer of assets and/or activities to the EU to ensure adequate protection of the EU banks, their customers and their funds.

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, 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),⁶ 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),⁷ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (DGSD),⁸ 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 (BRRD),⁹ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (PSD),¹⁰ Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16

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 176, 27.6.2013, p. 338.

⁷ OJ L 176, 27.6.2013, p. 1.

⁸ OJ L 173, 12.6.2014, p. 149.

⁹ OJ L 173, 12.6.2014, p. 190.

¹⁰ OJ L 337, 23.12.2015, p. 35.

September 2009 on cross-border payments in the Community,¹¹ and Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (PAD),¹² as well as EU rules in the field of e-money issuing, including 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,¹³ will no longer apply to the United Kingdom. This has in particular the following consequences:

1. AUTHORISATIONS

- Entities authorised by United Kingdom competent authorities (hereafter “UK-authorised entities”) providing banking¹⁴ and payment services,¹⁵ and/or e-money services,¹⁶ can no longer benefit from the authorisation¹⁷ to provide those services and activities in the EU (they will lose the so-called “EU passport”) and will be treated as third country entities with regard to the establishment of branches¹⁸ or agents in the EU Member States. This means that those entities will no longer be allowed to provide services in the EU on a cross-border basis using their current UK authorisations.
- UK-authorised entities which have established branches in EU Member States will have to comply, after the end of the transition period, with the rules of the host Member State applicable to branches of entities having their head office in a third country¹⁹ including the requirement to be validly authorised by the relevant

¹¹ OJ L 266, 9.10.2009, p. 11.

¹² OJ L 257, 28.8.2014, p. 214.

¹³ OJ L 267, 10.10.2009, p. 7.

¹⁴ See Article 8(1) as well as Annex I of Directive 2013/36/EU. Several activities listed in Annex I of Directive 2013/36/EU 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”.

¹⁵ Articles 1, 2 and Article 4(3) with Annex I of Directive (EU) 2015/2366.

¹⁶ Articles 1 and 2 of Directive 2009/110/EC.

¹⁷ Articles 8 of Directive 2013/36/EU and 11 of Directive (EU) 2015/2366.

¹⁸ Articles 17 of Directive 2013/36/EU and 8 of Directive 2009/110/EC. .

¹⁹ Article 47 of Directive 2013/36/EU, Article 15 of Directive 2014/49/EU, Article 1(1)(a) of Directive (EU) 2015/2366, and Article 8 of Directive 2009/110/EC

competent authority of the host Member State in accordance with these rules. This may necessitate a specific authorisation as a branch or subsidiary and potentially lead to changes for depositors, for instance where deposit guarantee arrangements would need to change. Payment institutions authorised by United Kingdom competent authorities, after the end of the transition period, 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 based on their current UK authorisation.²⁰

- Entities authorised by the competent authorities in the EU (hereafter “EU-authorised entities”), including their branches, have to comply with the conditions of their authorisation at all times.²¹ Where EU-authorised entities have established branches in the United Kingdom, these branches will have to be within the scope 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 organisation²² and the requirements 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.²³ The services covered by the scope of the authorisation, including services provided by any branches of the EU-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.²⁴ The services provided by these branches will as well be subject to the relevant requirements which are set out in the EU legal framework.²⁵

2. ARRANGEMENTS AND EXPOSURES

- Arrangements which may affect the ability of EU-authorised entities to have an autonomous risk management and control framework, which is commensurate with the nature, complexity and risks of their activities, and sufficient operational resilience, including EU-based trading and hedging capabilities and continuous

²⁰ Articles 1(1), 11(1) and 37(1) of Directive (EU) 2015/2366.

²¹ Articles 18(c) of Directive 2013/36/EU and 13(c) of Directive (EU) 2015/2366.

²² Articles 10 of Directive 2013/36/EU and 11(4) of Directive (EU) 2015/2366.

²³ Article 11(8) of Directive (EU) 2015/2366.

²⁴ Article 104(1)(e) of Directive 2013/36/EU.

²⁵ See “Notice to Stakeholders – Withdrawal of the United Kingdom and EU rules in the field of Markets in Financial Instruments”.

access to financial market infrastructures also in times of crisis will have to be assessed²⁶ by the competent authority which has granted the authorisation. The assessment will e.g. consider whether, after the end of the transition period, EU-authorised entities are allowed to continue to rely on outsourcing²⁷ or supervisory arrangements,²⁸ including with respect to services provided by their branches, subsidiaries or parent undertakings in the United Kingdom, which may cover the continuation of access to UK financial market infrastructures, exemptions from the application of limits to large exposures²⁹, risk mitigation requirements³⁰ or other forms of exclusions involving counterparties established in the United Kingdom – including parent institutions or other institutions of the same group. After the end of the transition period, BRRD provisions relating to continuity of access to services in resolution will no longer apply in the United Kingdom, and this should be duly considered in such an assessment.

- The prudential treatment of exposures to third parties established in the United Kingdom³¹ will be impacted. According to Regulation 575/2013, exposures to entities established in a third country enjoy a less favorable prudential treatment than exposures to entities established in the EU. As a consequence, EU-authorised entities have to hold more capital against their UK exposures. In case the EU would declare the UK framework as equivalent, the capital to hold would be the same as towards similar exposures in the EU. While the assessment of the United Kingdom's equivalence is ongoing, its outcome cannot be predicted. EU-authorised entities have to be informed and ready for a situation in which the capital requirements applicable to their exposures towards third parties established in the United Kingdom would be higher than today. Similarly, in the resolution framework, after the end of the transition period, the assessment of the eligibility of liabilities for the minimum requirement for own funds and eligible liabilities (MREL) may be affected for those liabilities issued by Union institutions under

²⁶ This may imply the need to submit new applications for the respective treatments.

²⁷ Article 11(8) and 19 of Directive (EU) 2015/2366 and Article 8 of Directive 2009/110/EC.

²⁸ 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.

²⁹ 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.

³⁰ Article 11 of 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).

³¹ 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.

UK law.³² After the end of the transitional period, MREL-eligible liabilities issued by EU-authorized entities under UK law shall contain additional contractual clauses allowing for the contractual recognition of bail-in powers of Union authorities.³³

3. CONTRACTS

- Contracts between parties established in the EU and in the United Kingdom might be affected by the loss of the single passport, as this will impair the ability of UK-authorized entities to continue performing certain obligations and activities with regard to contracts concluded before the end of the transition period. Afterwards, the EU rules on conflicts of laws and jurisdictions will no longer apply to the United Kingdom. Where contracts³⁴ 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 that the withdrawal of the United Kingdom will have on the validity and enforceability of those contracts after the end of the transition period and take the necessary steps to mitigate any possible risks, including any risks to their clients with a view to ensuring the continuity of services after the end of the transition period.

4. CONSUMER PROTECTION FOR PAYMENTS AND BANK ACCOUNTS

- Transfer of funds from the United Kingdom to the EU in the form of credit transfers and direct debits in euro will continue to be processed under the SEPA (Single Euro Payments Area) after the end of the transition period.³⁵ However, UK-authorized entities may not be under the obligation to abide by certain rules

³² See Articles 45 and 55 of Directive 2014/59/EU. See the SRB expectations to ensure resolvability of banks in the context of Brexit (Nov 2018) and the SRB MREL Policy under the Banking Package 2020 Parts 6 and 7. 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.

³³ See Article 55(1) of Directive 2014/59/EU and SRB Position Paper 15 November 2018

³⁴ E.g. regarding contracts under UK law, issuances of eligible liabilities must have relevant contractual clauses as per Article 55 of Directive 2014/59/EU.

³⁵ As confirmed by the European Payment Council (EPC) in March 2019 (<https://www.europeanpaymentscouncil.eu/news-insights/news/european-payments-councils-decision-paper-brexit-and-uk-psps-participation-sepa>).

protecting payment users, such as the ban on surcharging. This may potentially result in higher fees.

- After the end of the transition period, under EU law, EU consumers may maintain a bank account with a UK-authorized entity, subject to the relevant UK legal requirements. If this bank account is with an UK-authorized entity in the United Kingdom, the deposit protection rules applicable in the United Kingdom apply. Bank accounts held with branches of UK-authorized entities in the EU may be protected according to the deposit protection regimes applicable in the relevant Member State. According to Directive 2014/49/EU, EU Member States shall check that branches established in their territory by a credit institution with a head office outside the EU have protection equivalent to that prescribed under this Directive. If protection is not equivalent, Member States may stipulate that these branches must join a deposit guarantee scheme.³⁶ EU customers should however be aware that this entity, which could also issue a payment card to them, will no longer be subject to transparency, consumer protection and security and fraud prevention requirements provided by Directive (EU) 2015/2366.³⁷
- Finally, until the end of the transition period, UK-authorized entities are still subject to Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (Payment Accounts Directive).³⁸ According to Article 11 of this Directive, EU consumers may ask their bank to help them open a payment account in an EU Member State. To this end, if requested to do so, the UK-authorized entity is obliged to provide EU consumers, free of charge, with a list of all their active standing orders for credit transfers and direct debit mandates, as well as with available information on recurrent transactions executed on their account over the past 13 months. The UK-authorized entity will also have to transfer any positive balance remaining on the consumer's UK account to any other accounts the consumer in question may hold with a payment service provider established in the EU.

Similarly, EU consumers can also, until 31 December 2020, ask their EU-authorized entity to help them open a payment account with a UK entity.

³⁶ Article 15(1) of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes, OJ L 173, 12.6.2014, p. 149–178; [Opinion of the European Banking Authority on deposit protection issues stemming from the withdrawal of the United Kingdom from the European Bra Union](#)

³⁷ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, OJ L 337, 23.12.2015, p. 35.

³⁸ OJ L 257, 28.8.2014, p. 214.

After the end of the transition period, these rules no longer apply to and in the United Kingdom.

The website of the Commission on Banking and Finance (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