



Brussels, 8 February 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF STATUTORY AUDIT

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 agreement¹ 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').² The United Kingdom will then become a 'third country'.³

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, statutory auditors and companies subject to audit requirements are reminded of legal repercussions which need to be considered when the United Kingdom becomes a third country.⁴

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 statutory audit (in particular the Statutory Audit Directive⁵) no longer apply to the United Kingdom. This has in particular the following consequences:

¹ Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

² 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.

³ A third country is a country not member of the EU.

⁴ For procedures on the approval of statutory auditors pursuant to Article 14 of the Statutory Audit Directive that are ongoing on the withdrawal date, the "*Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union*" establishes that, in respect of the persons covered in that report, these procedures will be completed under Union law (paragraph 32): https://ec.europa.eu/commission/publications/joint-report-negotiators-european-union-and-united-kingdom-government-progress-during-phase-1-negotiations-under-article-50-teu-united-kingdoms-orderly-withdrawal-european-union_en

⁵ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, OJ L 157, 9.6.2006, p. 87.

1. ENTITLEMENT TO CARRY OUT STATUTORY AUDITS IN THE EU

- As of the withdrawal date, natural persons approved as auditors by the United Kingdom (*United Kingdom auditors*) will be considered *third country auditors* and they will no longer be considered *statutory auditors* for the purpose of the Statutory Audit Directive.⁶ Audit entities approved by the United Kingdom (*United Kingdom audit entities*) will be considered *third country audit entities* and will no longer be considered *audit firms* for the purpose of the Statutory Audit Directive. Neither *United Kingdom auditors* nor *United Kingdom audit entities* will be entitled to carry out statutory audits required by the law of a Member State in accordance with the Statutory Audit Directive.
- An *audit firm* approved in a Member State (EU-27) should carefully examine whether it will continue, as of the withdrawal date, complying with the conditions set out in Article 3(4) of the Statutory Audit Directive, in particular in relation to voting rights and members of the administrative or management body of the *audit firm*.

2. REGISTRATION OF THIRD-COUNTRY AUDITORS AND AUDIT ENTITIES

- As of the withdrawal date, a *United Kingdom auditor* or *United Kingdom audit entity* providing an audit report concerning the annual or consolidated accounts of a company incorporated outside the EU whose transferable securities are admitted to trading on a regulated market⁷ of an EU Member State will have to be registered in that Member State as *third country auditor* or *third country audit firm*⁸, in accordance with Article 45 of the Statutory Audit Directive.
- Failing such registration, any such audit report will have no legal effect in the Member State concerned.
- *United Kingdom auditors* or *United Kingdom audit entities* registered in accordance with Article 45 of the Statutory Audit Directive will in principle be subject to the systems of public oversight, quality assurance and investigation and penalties of the Member State of registration (cf. Article 45(3) of the Statutory Audit Directive).⁹

3. OTHER ASPECTS

- **Statutory audit of consolidated accounts of undertakings in the EU that have subsidiaries in the United Kingdom:** In accordance with Article 27 (on statutory audits of consolidated financial statements) of the Statutory Audit Directive, the

⁶ Under Article 44 of the Statutory Audit Directive, a *United Kingdom auditor* could seek, as a *third country auditor*, to be approved as a *statutory auditor* by a Member State subject however to, inter alia, reciprocity. The *third country auditors* approved under Article 44 of the Statutory Audit Directive are subject to supervision by the relevant Member State authorities.

⁷ Except for issuers of high value-denominated debt securities (cf. Article 45(1) of the Statutory Audit Directive).

⁸ Article 16(2) and 17(2) of the Statutory Audit Directive.

⁹ Without prejudice to derogation in the case of equivalence (cf. Article 46 of the Statutory Audit Directive).

statutory auditor or *audit firm* approved in a Member State acting as group auditor of an undertaking in the EU will need to take into account, in respect of the audit of that undertaking's subsidiaries in the United Kingdom, that the relevant *United Kingdom auditor* or *United Kingdom audit entity* will be considered as *third-country auditor* or *third-country audit entity* for the purpose of the requirements of that Article (e.g. the audit work of the *United Kingdom auditor* or *United Kingdom audit entity* will be subject to evaluation and review by the group auditor).

- **Cooperation of EU statutory auditors and audit firms with competent authorities of the United Kingdom:** In accordance with Article 23(5), second subparagraph (on confidentiality and professional secrecy) of the Statutory Audit Directive, the *statutory auditor* or *audit firm* approved in a Member State that carries out the statutory audit of an undertaking in the EU which forms part of a group of undertakings whose parent undertaking is in the United Kingdom or of an undertaking in the EU which has issued securities in the United Kingdom may only transfer audit working papers or other documents related to the audit of the audited undertaking in the EU to the competent authorities of the United Kingdom under the conditions set out in Article 47 of the Statutory Audit Directive. In particular, this requires the agreement of the Member State concerned and the existence of reciprocity arrangements between the competent authorities.

The above is without prejudice to the possibility for the competent authority of a Member State to approve a third country auditor as statutory auditor in accordance with Article 44 of the Statutory Audit Directive.

The website of the Commission on auditing of companies' financial statements (https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/auditing-companies-financial-statements_en) provide for general information concerning statutory audits. These pages will be updated with further information, where necessary.

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