EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

Brussels, 7 July 2020
REV2 – replaces the notice (REV1) dated 8 February 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF CREDIT RATING AGENCIES

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a "third country".[1] The Withdrawal Agreement[2] provides for a transition period ending on 31 December 2020.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 an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an 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 be 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 situation implications that the end of the transition period will have on their activities.

Advice to stakeholders:

In view of this notice, credit rating agencies and financial market participants should assess the consequences of the end of the transition period, and take appropriate action, including where needed register in the EU and the issue credit ratings in the EU.

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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.

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, EU rules in the field of Credit Rating Agencies (CRAs) and in particular Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies[6] ("CRA Regulation") no longer apply to the United Kingdom. This has in particular the following consequences:

- Deregistration: In accordance with Article 4(1) of Regulation (EC) No 1060/2009, CRAs established in the EU need to be registered and supervised by the European Securities and Markets Authority (ESMA), in order for their credit ratings to be recognised for regulatory purposes in the EU. As CRAs established in the United Kingdom will no longer be considered to be established in the EU after the end transition period, ESMA must withdraw their registrations with effect after the end of the transition period, in accordance with Articles 14 and 20 of Regulation (EC) No 1060/2009.

- Use of credit ratings for regulatory purposes: As a consequence of the deregistration of CRAs established in the United Kingdom, credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, alternative investment fund managers and central counterparties in the EU will no longer be able to use credit ratings issued by these UK established CRAs for EU regulatory purposes (e.g. Solvency II for insurance undertakings, Capital Requirements Regulation for credit institutions).

- Endorsement: Credit ratings issued by a CRA established in a third country, which is part of a group to which a CRA established in the EU and registered by ESMA belongs, can be "endorsed" provided that certain conditions are met in accordance with Article 4(3) of Regulation (EC) No 1060/2009. Such endorsement presupposes that the conduct of the credit rating activities by the CRA established in that third country fulfils requirements which are at least as stringent as the EU-specific framework, that there is an objective reason for the credit rating to be elaborated in the third country and that there is an appropriate cooperation arrangement between ESMA and the relevant supervisory authority of the third country concerned. When "endorsed" in this way, credit ratings issued by a CRA established in a third country may be used for regulatory purposes in the EU.

[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 302, 17.11.2009, p. 1.

- Prospectus: In accordance with Article 4(1) of Regulation (EC) No 1060/2009, where a prospectus contains a reference to a credit rating or credit ratings issued by a CRA established in the United Kingdom, it will need to include clear and prominent information stating that those credit ratings are not issued by a credit rating agency established in the EU and registered under Regulation (EC) No 1060/2009.

Credit ratings issued by a CRA established in the United Kingdom can thus not be used in the EU for regulatory purposes after the end of the transition period, unless an endorsement process, as set out above, has been carried out, or the United Kingdom has been declared equivalent with regard to its CRAs.

The equivalence process works as follows: Under Regulation (EC) No 1060/2009, the Commission is empowered to declare a third country equivalent with regard to its regulation and supervision of Credit Rating Agencies.[7] If the Commission declares the United Kingdom equivalent, ESMA may certify the CRA, provided that its credit ratings are not of systemic importance to the financial stability or integrity of the financial markets of one or more Member States.[8] If the United Kingdom has been declared equivalent, ratings issued by CRAs established in the United Kingdom can still be used in the EU for regulatory purposes.

While the assessment of the UK's equivalence in this area is ongoing, the assessment has not been finalised.

All stakeholders thus have to be informed and ready for a scenario where there is no equivalence granted by 1 January 2021 for CRAs established in the United Kingdom, and where no endorsement process has been carried out with regard to credit ratings issued in the United Kingdom.

The website of the Commission on the regulation of credit rating agencies (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/managing-risks-banks-and-financial-institutions/regulating-credit-rating-agencies_en) provides general information concerning CRAs. These pages will be updated with further information, where necessary.

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[7] See Article 5(6) of the CRA Regulation.

[8] On 15 March 2019, ESMA issued a public statement with to the implications of Brexit for credit rating agencies based in the United Kingdomhttps://www.esma.europa.eu/sites/default/files/library/esma33-5-735_public_statement.pdf).