



Brussels, 8 March 2021  
REV3 – replaces the notice (REV2)  
dated 3 July 2020<sup>1</sup>

## **NOTICE TO STAKEHOLDERS**

### **WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES ON COMPANY LAW**

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.<sup>2</sup> The Withdrawal Agreement<sup>3</sup> provided for a transition period which ended on 31 December 2020. The Withdrawal Agreement provided also, in some cases, for separation provisions at the end of the transition period.

During the transition period, the European Union and the United Kingdom negotiated a Trade and Cooperation Agreement, which was signed on 30 December 2020<sup>4</sup> and applies provisionally since 1 January 2021.<sup>5</sup>

All interested parties, and especially economic operators, are reminded of the legal situation applicable since the end of the transition period

#### **Advice to stakeholders:**

To address the consequences set out in this notice, in particular those companies incorporated in the United Kingdom while having the central administration or the principal place of business in the EU should seek legal advice.

#### **Please note:**

This notice does not address

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<sup>1</sup> REV3 clarifies that the legal effects of the end of the transition period are not altered by the EU-UK Trade and Cooperation Agreement.

<sup>2</sup> A third country is a country not member of the European Union.

<sup>3</sup> 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 L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

<sup>4</sup> Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L444, 31.12.2020, p.14.

<sup>5</sup> OJ L 1, 1.1.2021, p.1.

- 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);
- European international insolvency law;
- EU labour law, including the rules on European Works Councils.

For these aspects, other notices are in preparation or have been published.<sup>6</sup>

Since the end of the transition period, EU company law no longer applies to the United Kingdom. The consequences are set out below. **The Trade and Cooperation Agreement, and in particular its provision on national treatment of investors and covered enterprises with respect to their establishment and operation,<sup>7</sup> do not alter the legal effects set out below.**

## 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.

Since the end of the transition period, companies incorporated in the United Kingdom are third country companies and therefore not covered by Article 54 TFEU. As a result, in accordance with the case law of the Court of Justice, Member States are not obliged to recognise the legal personality (and thus the limited liability) of those companies incorporated in the United Kingdom which have the central administration or the principal place of business in an EU Member State. 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 an EU Member State**, they are branches of third country companies and accordingly the rules relevant to branches of third country companies 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,<sup>8</sup> provides for rules on *inter alia* **incorporation<sup>9</sup>, capital maintenance and alteration.<sup>10</sup>** Directive (EU) 2017/1132

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<sup>6</sup> [https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period\\_en](https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en)

<sup>7</sup> Cf. Article SERVIN.2.3 (National Treatment) of the Trade and Cooperation Agreement.

<sup>8</sup> OJ L 169, 30.6.2017, p. 46.

<sup>9</sup> Chapter II of Title I of Directive (EU) 2017/1132.

applies to limited liability companies incorporated in accordance with national laws of the Member States. Since the end of the transition period, 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.<sup>11</sup>

Since the end of the transition period, these rules no longer apply to the United Kingdom.<sup>12</sup> Where a cross border merger involving a company incorporated in the United Kingdom is pending at the end of the transition period, (national) rules for mergers with companies established in third countries apply to the merger as of the end of the transition period.

### **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 companies<sup>13</sup> 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.<sup>14</sup> Since the end of the transition period, 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.

Commission Recommendations 2005/162/EC<sup>15</sup> and 2004/913/EC<sup>16</sup> address the independence of board members and the remuneration of directors. They provide for recommendations regarding the independence of board members from the company

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<sup>10</sup> Chapter IV of Title I of Directive (EU) 2017/1132.

<sup>11</sup> Article 87(1) of Directive (EU) 2017/1132.

<sup>12</sup> The reference, in Annex I of Directive (EU) 2017/1132, to company forms in the United Kingdom becomes obsolete.

<sup>13</sup> OJ L 184, 14.7.2007, p. 17.

<sup>14</sup> Article 1(1) of Directive 2007/36/EC.

<sup>15</sup> 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.

<sup>16</sup> 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.

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.<sup>17</sup> Since the end of the transition period, 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 bids<sup>18</sup> sets rules for takeover bids where all or some of the securities are traded on a regulated market in one or more Member States.<sup>19</sup> Since the end of the transition period, where the securities are traded in the United Kingdom, this Directive no longer applies. Where a takeover bid is pending at the end of the transition period, national rules for takeover bid will apply as of the end of the transition period.

## **6. BUSINESS REGISTERS INTERCONNECTION SYSTEM (BRIS)**

Member States' business registers are interconnected via a European central platform<sup>20</sup> through the business registers interconnection system (BRIS). Certain key information on EU limited liability companies as stored in Member States' business registers is publicly accessible through the European e-Justice Portal.<sup>21</sup> Since the end of the transition period, information in the United Kingdom company register is no longer exchanged via BRIS nor accessible through the European e-Justice Portal.

## **7. EUROPEAN COMPANY FORMS**

- **The European Company (SE)**<sup>22</sup> has to have its registered office in the EU, in the same Member State as their head office.<sup>23</sup> Since the end of the transition period, SEs that have their registered office in the United Kingdom no longer enjoy the status of an SE. The recognition of such companies by a 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. Since the end of the transition period, the UK incorporated companies are not able to participate in the formation of an SE. SEs that have their registered office in the EU after the end of the transition period will preserve their legal status, even if they were formed, before the

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<sup>17</sup> Sections 1.1. and 2.1. of Recommendation 2005/162/EC, sections 1.1. and 2.2. of Recommendation 2004/913/EC.

<sup>18</sup> OJ L 142, 30.4.2004, p. 12.

<sup>19</sup> Article 1(1) of Directive 2004/25/EC.

<sup>20</sup> Article 22 of Directive (EU) 2017/1132.

<sup>21</sup> [https://e-justice.europa.eu/content\\_business\\_registers\\_at\\_european\\_level-105-en.do](https://e-justice.europa.eu/content_business_registers_at_european_level-105-en.do).

<sup>22</sup> 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.

<sup>23</sup> Article 7 of Regulation (EC) No 2157/2001.

withdrawal date, by an UK company. The same applies with regard to subsidiary SEs.<sup>24</sup>

- **The European Economic Interest Grouping (EEIG)**<sup>25</sup> has to be registered in an EU Member State.<sup>26</sup> Since the end of the transition period, 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 cease to belong to an EEIG since the end of the transition period.

- **The European Cooperative Society (SCE)**<sup>27</sup> has to be set up within the territory of the EU<sup>28</sup> and the registered office has to be in the same EU Member State as the head office.<sup>29</sup> Since the end of the transition period, SCEs registered in the United Kingdom no longer enjoy the status of an SCE.

Article 2 of Regulation (EC) No 1435/2003 sets out the requirement for EU 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 at the end of the transition period, the SCE ceases to enjoy the status of an SCE.

The websites of the Commission on company law [http://ec.europa.eu/iustice/civil/company-law/index\\_en.htm](http://ec.europa.eu/iustice/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](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

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<sup>24</sup> Article 2(3) of Regulation (EC) No 2157/2001.

<sup>25</sup> 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.

<sup>26</sup> Article 6 of Regulation (EEC) No 2137/85.

<sup>27</sup> 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.

<sup>28</sup> Article 1(1) of Regulation (EC) No 1435/2003.

<sup>29</sup> Article 6 of Regulation (EC) No 1435/2003.