



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

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Private and Confidential

27 August 2019

Re: Withdrawal of the United Kingdom from the European Union

Dear CEO

As you are aware, the Central Bank of Ireland (the Central Bank) has previously corresponded with the Firm in relation to the withdrawal of the United Kingdom (the UK) from the European Union (the EU) (Brexit). Since the UK voted to leave the EU, the Central Bank has had extensive engagement with industry on the need to have appropriate contingency plans in place to ensure continuity of business and to address key risks that may arise from Brexit.

Further to the Central Bank's concerns regarding some UK credit institutions' contingency planning and communications to customers, the purpose of this letter is to set out the Central Bank's position on a number of issues, in particular the responsibilities of UK credit institutions in the event that there are no relevant transitional arrangements agreed between the EU and the UK. In this regard, Annex I sets out information regarding:

1. Loss of Rights to Provide Services in other EEA States
2. Banking Business (including information on Section 7 of the Central Bank Act, 1971)
3. Other Activities

Customer Communications

As previously communicated, it is particularly important that customers of UK credit institutions are informed of the impact of any loss of passporting rights, including the potential detriment that may occur after the date of withdrawal of the UK from the EU. Any such communication must be in line with the EBA Opinion of 25 June 2018¹ and to include, at a minimum:

- The effects on existing contracts;

¹ EBA Opinion on preparations for the withdrawal of the United Kingdom from the European Union' (25 June 2018).



- The possibility of making recourse to an alternative dispute resolution mechanism such as the Financial Services and Pensions Ombudsman (FSPO);
- The effects on any deposit guarantee schemes and/or investor compensation scheme coverage. For instance, depositors should be aware that, because of the UK's withdrawal from the EU, the UK's deposit guarantee scheme may no longer be subject to the minimum standards set out in the Directive 2014/49/EU;
- The protections afforded to customers under the Central Bank of Ireland's statutory codes of conduct e.g. Consumer Protection Code, Code of Conduct on Mortgage Arrears, SME Regulations etc.

Credit institutions providing services to Irish consumers on a Freedom of Establishment and/or Freedom of Services (FoE/FoS) basis are required to comply with the Central Bank's Consumer Protection Code 2012. Specifically,

- Provision 3.10 requires that at least one month's notice be given to consumers where the Firm intends to alter the range of services it provides.
- Provision 3.11 requires, inter alia, that at least two months' notice be given to consumers where the Firm intends to cease operating, merge with another, or transfer all or part of its regulated activities to another regulated entity.

The Central Bank expects the Firm to adhere to Provisions 3.10 and 3.11 of the Consumer Protection Code 2012, where relevant.

If you have any queries, please contact consumerprotectionpolicy@centralbank.ie.

Regards,

A handwritten signature in black ink that reads "Grainne McEvoy". The signature is written in a cursive style with a large, looping 'y' at the end.

Grainne McEvoy
Director of Consumer Protection

ANNEX 1

Post Brexit, the UK will become a third country (non-EU) for the purposes of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014)¹, which implements the Capital Requirements Directive IV (CRD IV)² in Ireland. As a result, and in the absence of an EU/UK agreement on transitional arrangements, the Firm will lose its right to provide services in other EEA Member States on a Freedom of Establishment and/or Freedom of Services (FoE/FoS) basis. The loss of FoE/FoS rights may affect the ability of the Firm to continue performing certain obligations and activities and ensure service continuity with regard to contracts concluded before the withdrawal date.

Loss of Rights to Provide Services in other EEA States

It is the Firm's responsibility to satisfy itself, including through obtaining advice from its legal advisors, of its licensing and regulatory obligations under Irish financial services legislation, particularly given that the Firm is best placed to know the specifics of its business operations.

Please note that the provision of financial services in Ireland requiring an authorisation under financial services legislation (including the carrying out of banking business) without the relevant authorisation is a criminal offence. The Central Bank has a statutory duty to report criminal activity to An Garda Síochána.

Banking Business³

Section 7 of the Central Bank Act 1971 Act (the 1971 Act) sets out a restriction on carrying on banking business unless the relevant person is the holder of a relevant license or authorisation. As

¹ <https://service.betterregulation.com/document/149175>

² 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

³ Banking business' is defined as (a) receiving money on the person's own account from members of the public either on deposit or as repayable funds, and (b) granting of credits on own account, subject to certain exemptions (e.g. depositing of money associated with general commercial 'trade', hire purchase or leasing, receiving money as collateral etc).

stated above, it will be matter for the Firm to satisfy itself of its licensing and regulatory obligations. While the Central Bank cannot provide legal interpretation of legislation, it is of the view that, provided that certain conditions are satisfied, the continued provision of services to Irish-based customers, be they retail or corporate, may not constitute “banking business” within the State, provided that certain conditions are satisfied. Such conditions may necessitate changes to practice and limitations to certain business lines.

In particular, the Firm must be able to demonstrate, going forward, that banking business is not carried on in the State, and that any indicators of the carrying out of banking business in the State that may trigger an obligation to hold a license to carry out banking business are not, or will no longer, be present.

When assessing such cases, the Central Bank may, when identifying whether there are activities, practices or systems in place to attract or facilitate Irish-based customers indicative of the carrying out of banking business in the State, take some or all of the following considerations into account, on a case-by-case basis, depending on the specific circumstances:

- i. presence in the State;
- ii. marketing materials targeted at Irish-based customers to inform them of the services provided by a credit institution authorised in another jurisdiction;
- iii. having in place, or adapting, operational infrastructure or policies specifically to facilitate the provision of banking services to Irish-based customers;
- iv. the volume of the Irish customer base (with particular regard to new customers following the UK’s withdrawal from the EU) – a material number of customers in the State availing of a banking service provided by a credit institution authorised in another jurisdiction is indicative of the conduct of banking business in the State;
- v. the classification of customer – a proportionally higher number of Irish-based retail customers would tend to indicate that such customers are being targeted.

Regarding point (ii) in particular, the Firm should be able to evidence, upon request from the Central Bank, the arrangements and mechanisms it has in place to ensure that existing Irish-based customers are not intentionally, or unintentionally, subject to marketing of financial products or services.

The Central Bank notes that some firms have expressed a view that they do not need to engage in contingency planning on the basis that they are providing deposit taking services to their Irish based customers on a “reverse solicitation” basis.

In this case, bearing in mind the licensing and regulatory framework described above, and with particular regard to the considerations listed in point i) to v) above, the Central Bank expects firms to

be able to explain, on a case-by-case basis, the rationale for concluding that the provision of a service falls outside this framework.

Exemption from Section 7 of the Central Bank Act, 1971

Section 7 of the 1971 Act prohibits a person or body corporate from carrying on banking business or holding themselves out as a banker. Using the words "bank", "banker" or "banking" or a variant in a name is considered as holding oneself out as a banker. Failure to comply with this requirement is a breach of Section 7 of the 1971 Act and is viewed seriously by the Central Bank. This prohibition does not apply to a credit institution or financial institution that is permitted by the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) to carry on business within the State where the institution complies with all conditions imposed on such an institution by those Regulations or under an Act.

Section 8 of the 1971 Act provides for a potential exemption from the Section 7 general prohibition. The granting of any exemptions is not automatic. To seek to avail of such an exemption, a firm must apply to the Central Bank via bank.authorisations@centralbank.ie.

Other Activities

As regards other banking-related services set out in Annex I of CRD IV that are subject to mutual recognition (e.g. payment services, electronic money and investment services etc.), the permission to provide these services in the State in the absence of a banking license is governed by the Irish transposition of other EU level sectoral legislation (e.g. PSD2, or MiFID II).

In addition, at a domestic level, Part V of the Central Bank Act 1997 (Part V) sets out the requirements for the provision of retail credit or credit servicing. With respect to any existing loan book, it will be necessary for the Firm to assess whether its activities after the withdrawal date of the UK from the EU will fall within the scope of regulated business under Part V or other applicable domestic legislation e.g. moneylending, where relevant.

I. Retail Credit

The Firm should review any existing loan book it has to assess whether Irish-based borrowers fall within the definition of "relevant persons" in Part V and, if so, whether one or more of the

circumstances set out in paragraphs (a) - (e) of the definition of “retail credit firm” apply. Subject to the outcome of this assessment, if the Firm’s activities fall within the definition of “retail credit firm”, it may require an authorisation under Part V unless it is otherwise made exempt from the authorisation requirement by the Central Bank pursuant to section 29A of Part V.

II. Credit Servicing

If the Firm carries on one or more of the activities set out in paragraphs (a)-(c) of the definition of “credit servicing”⁴ in respect of credit agreements with relevant borrowers⁵, it may require authorisation as a credit servicing firm after the withdrawal date of the UK from the EU, unless one or more of the circumstances in paragraphs (a) - (d) of the definition of “credit servicing firm” apply.

Again, while the Central Bank cannot provide any legal interpretation of legislation, it is of the view that the continued provision of services to Irish-based customers may not constitute “credit servicing” provided that certain conditions are satisfied as follows:

- a) the borrower was UK based whenever the credit agreement was entered into;
- b) the borrower is merely repaying the outstanding principal and interest; and
- c) new credit not covered by the original credit agreement is not envisaged.

Meeting these conditions in time for the withdrawal date of the UK from the EU may necessitate changes to practice and limitations to certain business lines.

In relation to any further authorisation queries/applications, below are the details of the relevant contact areas:

Credit Institutions: bank.authorisations@centralbank.ie	Payment Institutions: piauthorisations@centralbank.ie
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⁴ See section 28 of Part V.

⁵ “relevant borrower” means - (a) a relevant person, or (b) a micro, small or medium-sized enterprise within the meaning of Article 2 of the Annex to the Commission Recommendation 2003/361/EC of 6 May 2003 [OJ No. L124, 20.5.2003, p.36] but only to the extent that the credit granted to it under the credit agreement concerned was provided by a financial service provider authorised, by the Bank or an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank, to provide credit in the State.

Investment Firms: investmentfirmauthorisations@centralbank.ie	Credit Servicing Firms: creditservicingfirms@centralbank.ie
Retail Credit Firms: rcf@centralbank.ie	Moneylending: moneylending@centralbank.ie