Group Briefing

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Brexit: Irish Legislative Update

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With 7 weeks to go until Brexit (unless an extension is agreed by the EU and UK to the Article 50 notice), a no-deal Brexit remains a possibility. The Irish Government is moving ahead with the legislation necessary to mitigate the immediate effects of a no-deal Brexit in the areas of insurance, settlement, healthcare, enterprise, energy, education, tax, transport, employment, social protection, extradition and immigration.

CONTEXT – EUROPEAN COMMISSION CONTINGENCY ACTION PLAN

This follows on from the implementation by the European Commission, in December 2018, of various legislative proposals signposted in its Brexit Contingency Action Plan. At the same time, the Commission signalled to the EU 27 Member States that they should be taking action in the areas of citizens' rights, and social security.

From a financial services perspective, the Commission felt that a limited number of measures required adoption to cater for a potential 'no deal' Brexit as follows:

» a temporary equivalence decision whereby ESMA can recognise UK-based central counterparties, allowing them to continue providing services in the EU for 12 months following a no-deal Brexit;

» a temporary equivalence decision whereby UK central securities depositaries (**CSDs**) will be allowed to provide certain services to operators in the EU for 24 months following a no-deal Brexit;

» a delegated regulation extending the date of deferred application of the clearing obligation for certain over-the-counter derivative contracts for 12 months in relation to contracts that are novated for the sole purpose of replacing a UK counterparty with an EU27 counterparty; and

» a delegated regulation allowing contracts with a UK counterparty currently subject to risk management procedures under the European Market Infrastructure Regulation to be novated for a fixed period of 12 months, if the sole purpose of the novation is to replace the

UK counterparty with an EU27 counterparty to ensure that those novations are not now subject to margining requirements that would not have applied when they were originally entered into.

Temporary measures were also adopted by the Commission in respect of UK nationals residing in the EU, air transport, road haulage, customs/exports, climate policy, and the PEACE IV and United Kingdom-Ireland programmes.

IRISH GOVERNMENT'S CONTINGENCY ACTION PLAN

The Irish Government published its Contingency Action Plan for a no-deal Brexit in December 2018, confirming that all Government departments had prepared sector-specific plans identifying the key challenges faced by them in the context of a no-deal Brexit, and had identified approximately 45 key issues that would need to be addressed by way of legislation.

GENERAL SCHEME OF IRISH BREXIT BILL

The General Scheme of the Miscellaneous Provisions (Withdrawal of the United Kingdom from the European Union on 29 March 2019) Bill was then published by the Government on 24 January 2019. While the Spring Legislative Programme has also been published by the Government, should a no-deal Brexit seem likely, it is expected that all available time in the Houses of the Oireachtas will be dedicated to progressing and enacting the Bill.

STRUCTURE OF THE BILL

The General Scheme summarises what will be in the Bill itself when it is published towards the end of February. The Bill will be an 'Omnibus Bill' i.e. it will cover a number of different economic sectors and pieces of legislation. It is divided into 17 parts, prepared by 9 Government Ministers. Once the Bill becomes law, the relevant Ministers will make the required commencement orders at the appropriate time. The Government's introductory statement to the General Scheme confirms the importance of protecting the Common Travel Area, and the need for a number of measures across the healthcare, transport, energy and education sectors to support cross-border cooperation between Ireland and Northern Ireland.

Key elements of the General Scheme are set out below. The Bill itself, when published towards the end of this month, will contain much more detailed provisions:

PART	DEPARTMENT	PROVISIONS
PART 2	Department of Health	Arrangements to facilitate continued access to healthcare in Ireland and the UK.
PART 3	Department of Business, Enterprise and Innovation	Measures to enable Enterprise Ireland to continue to support businesses through investment, loans, and RD&I grants.
PART 4	Department for Climate, Energy and Communications	Modification of Single Electricity Market licences to ensure that the Commission for the Regulation of Utilities has the power to ensure Ireland's compliance with the EU energy regulation framework, and to amend licences as necessary.
PART 5	Department of Education and Skills	Measures to ensure grant access for higher and further education students who are studying in the UK, and higher and further education UK-national students studying in Ireland.
PART 6	Department of Finance	Amendments across the areas of income tax, corporation tax, capital gains tax and stamp duty to ensure continuity for businesses and citizens in respect of current access to taxation measures such as reliefs and allowances.
PART 7	Department of Finance	If there is a no-deal Brexit, Euronext Dublin would no longer be able to use CREST (a UK-based CSD) to settle trades in Irish equities and exchange-traded funds. It is proposed that the Minister for Finance be allowed to designate a third-country system, such as CREST, for the purposes of the Irish Settlement Finality Regulations. This means that Irish participants in a UK-based CSD such as CREST would benefit from the protections of the Settlement Finality Directive should that CSD become insolvent. As mentioned at the start of this briefing, the Commission has also adopted a temporary equivalence decision for UK-based CSDs to facilitate the transition by participants to EU-based CSDs.

PART	DEPARTMENT	PROVISIONS
PART 8	Department of Finance	Measures to ensure that Irish policyholders who hold existing life and non-life insurance policies with insurance undertakings (or through insurance intermediaries) who operate in Ireland from the UK or Gibraltar will be unaffected if those undertakings no longer have the right to carry on business in EU Member States on a no-deal Brexit. There will be a run-off period which will allow those undertakings/intermediaries to meet their contractual obligations to their Irish customers for 3 years, but they will not be able to write new business without the appropriate EU authorisation.
PART 9	Department of Transport, Tourism and Sport	Measures to facilitate cross-border rail services between Ireland and Northern Ireland.
PART 10	Department of Transport, Tourism and Sport	Measures to facilitate cross-border bus and coach services between Ireland and Northern Ireland. The National Transport Authority's remit would be extended to cover the regulation of bus services between Ireland and third countries.
PART 11	Department of Employment Affairs and Social Protection	Provision for the continued payment of 21 social protection benefits in line with the Government's commitment to the Common Travel Area.
PART 12	Department of Employment Affairs and Social Protection	Measures to ensure that employees that are employed, or habitually employed, in Ireland will continue to be covered by the Insolvency Payments Scheme where their employer goes into insolvency under UK law.
PARTS 14-17	Department of Justice and Equality	A number of measures designed to maintain effective extradition arrangements between Ireland and the UK, and to enable ongoing cooperation on immigration.

WHAT HAPPENS NEXT?

In parallel with the development of the Omnibus Bill, work is also continuing on 28 Statutory Instruments that the Government has identified as being necessary should a no-deal Brexit materialise.

The full text of the Omnibus Bill is expected to be presented to the Dáil towards the end of February by Simon Coveney TD, Tánaiste and Minister for Foreign Affairs. As the Bill covers 9 Government Departments, Committee Stage will be taken on the floor of the Dáil, with a view to all TDs having an opportunity to participate in the debate, rather than in multiple individual committees. This should enable the Bill to move through the legislative process more quickly.

As mentioned above, the General Scheme of the Omnibus Bill is predicated on a no-deal Brexit occurring. If the EU Brexit negotiators do not accept Theresa May's proposals for changes to the draft EU-UK Withdrawal Agreement, the Bill will need to proceed quickly, in particular if no extension to the Article 50 notice period is sought by the UK.

We will publish further sector-specific updates once the Bill is published towards the end of this month. In the meantime, if you have any queries, please contact any member of our Brexit team.