

Group Briefing

March 2019

Settlement Finality: *Ireland will implement Recital 7 on a 'no-deal' Brexit*

Ireland M&A Legal Adviser of the Year 2018
Mergermarket European M&A Awards

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Chambers Europe Awards

Ireland Law Firm of the Year 2018
International Financial Law Review (IFLR)
Europe Awards

Advised on Equity Deal of the Year 2018 – Allied Irish Banks IPO
International Financial Law Review (IFLR)
Europe Awards

Ireland Law Firm of the Year 2018
Who's Who Legal

Ireland Law Firm of the Year 2017
Chambers Europe Awards

Best Firm in Ireland 2018, 2017 & 2016
Europe Women in Business Law Awards

Best National Firm for Women in Business Law 2018, 2017 & 2016
Europe Women in Business Law Awards

Best National Firm Mentoring Programme 2018, 2017 & 2016
Europe Women in Business Law Awards

Best National Firm for Minority Women Lawyers 2018
Europe Women in Business Law Awards

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

In its draft 'no-deal Brexit' omnibus legislation (the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2019), the Irish Government is proposing to implement Recital 7 of the Settlement Finality Directive into Irish law to ensure continued access for Irish participants in designated UK payment and settlement systems (including CREST) if there is a 'no-deal' Brexit.

SETTLEMENT FINALITY DIRECTIVE

The Settlement Finality Directive (the **Directive**) regulates systems (**Designated Systems**) used by financial market participants to transfer financial instruments and payments. It was transposed into Irish law in 2010 by the European Communities (Settlement Finality) Regulations 2010 (the **Irish Regulations**).

The Directive ensures that a transfer order that is entered into a Designated System is finally settled, regardless of whether the sending participant subsequently becomes insolvent, and regardless of whether the transfer order is revoked. Related netting arrangements, and rights in respect of collateral security, are also protected. The participants in Designated Systems are typically financial institutions (such as banks), systems operators (such as

central securities depositories), clearing houses and central counterparties.

The Irish Regulations protect transfer orders and associated transfers of financial collateral from the effects of Irish insolvency law.

WHAT WOULD A NO-DEAL BREXIT MEAN FOR SETTLEMENT FINALITY AND IRELAND?

The settlement finality regime relies on automatic mutual recognition by EU Member States of the systems designated by other EU Member States to ensure consistent protections for transfer orders and related collateral arrangements.

On a 'no-deal' Brexit, the automatic recognition of the UK's Designated Systems by the remaining EU Member States (including Ireland) will cease, as the UK will become a 'third country', outside the EU.

For risk management reasons, it is possible that UK Designated Systems will then be forced to limit participation by Irish participants in those systems (and that Irish participants will be forced to limit their participation in UK Designated Systems) unless Irish law is amended to protect payments and transfers of securities in UK Designated Systems from the effects of Irish insolvency proceedings.

This issue is particularly relevant for issuers of shares and exchange traded funds listed on Euronext Dublin (formerly the Irish Stock Exchange), as trades in these instruments settle in Euroclear's CREST system, which is subject to both UK and Irish settlement finality laws.

When publishing the [General Scheme of its no-deal Brexit Omnibus Bill](#) on 24 January 2019, the Irish Government suggested that, without suitable legislative amendment:

"in a no-deal Brexit scenario [...] Euronext Dublin would not be able to continue using the CREST system as the UK would become a third country, outside the EU".

This would clearly have a very significant impact on trading on Euronext Dublin.

Our briefing on the General Scheme of the Bill is here: [Brexit: Irish Legislative Update \(8 February 2019\)](#).

WHAT IS RECITAL 7?

Recital 7 of the Directive allows a Member State, such as Ireland, to apply the Directive's provisions to domestic (i.e. Irish) participants in third country systems (i.e. UK Designated Systems following a 'no-deal' Brexit). The Irish Government is proposing to implement Recital 7, so as to protect payments

and transfers of securities in those UK Designated Systems from the effects of Irish insolvency proceedings. Until now, Ireland had not reflected Recital 7 in the Irish Regulations.

WHAT IS PROPOSED?

Part 7 (*Financial Services: Settlement Finality*) of the Bill provides for the following:

Temporary designation of existing UK designated systems (Section 62 of the Bill):

Existing UK Designated Systems with Irish participants would be treated in a similar manner to Irish Designated Systems for a maximum of 9 months, provided that:

- » the Designated System and its rules meet the requirements in Regulation 7 of the Irish Regulations (which set out requirements for the rules of Designated Systems),
- » the operator of the Designated System notifies the Central Bank of Ireland and the Minister for Finance that the Designated System is within the scope of section 62 within 3 months, and
- » UK laws on settlement finality remain equivalent to the Irish Regulations.

Non-temporary designation of existing UK designated systems (Section 63 of the Bill):

The Minister for Finance would be permitted to designate (on a non time-limited basis) UK Designated Systems with Irish participants for the purpose of the Irish Regulations provided that:

- » the Designated System and its rules meet the requirements in Regulation 7 of the Irish Regulations, and

- » UK laws on settlement finality remain equivalent to the Irish Regulations.

ESMA Notifications:

The Minister for Finance would be required to notify ESMA of any designation made in respect of UK Designated Systems.

Collateral arrangements:

Changes are proposed to support collateral arrangements in connection with Designated Systems, including amending the definition of "central bank" in the Irish Regulations to include a central bank of the United Kingdom.

NEXT STEPS

The next steps for the Omnibus Bill are:

- » **Second Stage in Dáil Éireann (Parliament):** commenced this week on Tuesday 26 February
- » **Committee and Final Stages in Dáil Éireann:** expected to take place next week (week commencing 4 March)
- » **Seanad (Upper House) (all stages):** expected to take place during the week commencing 11 March

Once the Bill has been approved by Dáil Éireann and the Seanad, it will be sent to the President for signature.

The Bill specifically addresses a 'no-deal' Brexit scenario on 29 March, and it is expected that the Government Ministers representing the 9 Government departments covered by the Bill will only sign the necessary commencement orders commencing the relevant Parts of the Bill should the UK leave the EU without a deal on 29 March.

KEY CONTACTS



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