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FINANCIAL REGULATION  
BREXIT

# Brexit – CSD Temporary Equivalence and Settlement Finality: Update

9 December 2020

The European Commission's recent temporary equivalence decision is good news for the settlement of Irish securities, and an important step towards minimising disruption to the Irish capital markets when the Brexit transition period ends on 31 December 2020.

This briefing explains what the decision means, and also gives an update on the implementation of Recital 7 of the Settlement Finality Directive into Irish law post-Brexit.

## THE COMMISSION'S EQUIVALENCE DECISION

On 26 November 2020, the European Commission's decision to determine the legal and supervisory requirements for UK central securities depositories (**CSDs**) as equivalent to those in the EU until 30 June 2021 was published in the Official Journal ([here](#)) (the **Temporary Equivalence Decision**).

The Temporary Equivalence Decision:

- enables Euroclear UK & Ireland (**EUI**) (a UK-based CSD, which serves Euronext Dublin (formerly the Irish Stock Exchange)) to continue to offer CSD services in respect of Irish securities after the Brexit transition period ends on 31 December 2020; and
- allows the European Securities and Markets Authority (**ESMA**) to begin a formal recognition process for EUI.

ESMA recognition of EUI will allow Irish securities to continue to be settled through EUI until this market transfers to Euroclear Bank Belgium (**Euroclear Belgium**) (the preferred long-term CSD solution for the Irish market) in Q1 2021.

## What does the Temporary Equivalence Decision mean for Ireland?

It is another important action aimed at ensuring that the Irish capital markets do not face disruption at the end of December 2020 when the Brexit transition period ends.

The equivalence process is necessary to enable Irish issuers' securities to continue to be issued and settled through the CREST system, operated by EUI, for a time-limited period until the migration to Euroclear Belgium. As mentioned above, the equivalence is temporary and will end on 30 June 2021.

The Temporary Equivalence Decision is particularly relevant for issuers of shares and exchange traded funds listed on Euronext Dublin, as trades in these instruments settle in EUI's CREST system, which is subject to both UK and Irish settlement finality laws.

EUI must now formally apply to ESMA seeking recognition as a third country CSD under Article 25 of the Central Securities Depositories Regulation in respect of, among other matters, Irish securities settlement, and has [confirmed its intention to do so](#).

## Reaction to the Temporary Equivalence Decision

The Temporary Equivalence Decision has been welcomed by the [Central Bank of Ireland](#) and the [Irish Government](#) as a key milestone, and as reassurance for the market that Ireland continues to be a well-connected and stable environment for investment and trading.

## IRISH GOVERNMENT WORK ON SETTLEMENT FINALITY

The Irish Government has already been active in its efforts to ensure that trading on Euronext Dublin would not be affected by Brexit. It put in place dedicated legislation (the [Migration of Participating Securities Act 2019](#)) to support the planned migration to Euroclear Belgium, and has included provisions relating to settlement finality in the [Withdrawal of the United Kingdom from the European Union \(Consequential Provisions\) Bill 2020](#) (the **2020 Brexit Bill**).

### Implementing Recital 7

The Settlement Finality Directive (the **Directive**) regulates systems (**Designated Systems**) (such as EU) 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 Irish Regulations protect transfer orders and associated transfers of financial collateral from the effects of Irish insolvency law. Recital 7 of the Directive allows a Member State to apply the Directive to third country systems. Until now, Ireland has not reflected Recital 7 in the Irish Regulations.

At the end of the Brexit transition period, 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.

In 2019 and in anticipation of a potential *'no-deal'* Brexit, Ireland enacted the [Withdrawal of the United Kingdom from the European Union \(Consequential Provisions\) Act 2019](#) (the **2019 Brexit Act**). As set out in our [previous briefing](#), Part 7 of the 2019 Brexit Act (which has not been commenced) relied on Recital 7 of the Directive to extend the benefit of the Irish Regulations to UK Designated Systems. Following the Withdrawal Agreement between the UK and the EU, and in anticipation of the end of the transition period on 31 December 2020, Part 7 of the 2019 Brexit Act has been recast in new legislation, the 2020 Brexit Bill, which is in the course of parliamentary approval.

Once enacted (in its current form) Part 9 of this new legislation will (in the same manner as Part 7 of the 2019 Brexit Act) implement Recital 7 of the Directive and accordingly insulate payments and transfers of securities in UK Designated Systems from the effects of Irish

insolvency proceedings. The relevant provisions in the 2020 Brexit Bill allow, where certain conditions are satisfied, UK Designated Systems to obtain a temporary or non-temporary designation for settlement finality purposes under the Irish Regulations.

### NEXT STEPS

The Bill is scheduled to complete its passage through the Houses of the Oireachtas (the Irish Parliament) this week, and will then be sent to the President for signature. The provisions relating to settlement finality will come into operation on a date to be specified by the Minister for Finance, and we expect this to happen in advance of 31 December 2020.

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.

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