

## Brexit: Key Considerations for Banking & Payments

*Following the decision of the United Kingdom to leave the European Union, the Banking & Payments Federation Ireland (BPFI) and its affiliate, the Federation of International Banks in Ireland (FIBI) are strongly supportive of the efforts of the Irish Government and diplomatic bodies engaged in discussions at EU level on this important issue. This paper outlines our members' key priorities in the upcoming negotiations on and implementation of Brexit.*

Prime Minister Theresa May's notification to the European Council of the UK's intention to exit the EU, triggering Article 50 of the Lisbon Treaty, provides for a two year negotiation period between the EU and UK to set out the terms of an exit agreement.

With the intention of the UK to leave the Single Market and also the Customs Union, it is possible that the UK may ultimately assume the status of a third country, post-Brexit. Such a development is expected to mean that UK-based financial services companies will not retain any rights to passporting or single market access. As a result, Brexit has forced banks in the EU and the UK to strategically re-think their existing offering and global footprint. Given the complexity and scale of these potential changes, a sufficient transitional period will be needed to give banks and other stakeholders time to transition to the new permanent arrangements.

### **BREXIT: key considerations for the Irish Banking & Payments Sector**

The precise impact on the financial services sector in Ireland remains to be seen and depends on the upcoming negotiations and the future relationship between the EU and the UK with specific focus on the final outcome of negotiations on transitional arrangements, equivalence negotiations and market access.

The Irish financial services sector (home to over 400 financial services companies - 200 of which are foreign multinational companies) is an important contributor to and is influential in relation to the future direction of the Irish economy. Ireland is the fourth largest exporter of financial services in the EU totalling €11.5bn in 2015. It is important to note that, at €3.7bn, financial services exports to the UK accounted for more than one third of all FS exports to the UK in 2015. Around 35,000 people are employed in the sector with tax contributions reaching around €2bn annually.

What follows here are proposals agreed collectively by BPFI and FIBI member banks to provide for much-needed economic certainty, business certainty and legal certainty for our members' customers and employees during the negotiations, transition and subsequent arrangements for a new EU-UK relationship. **Specifically we would emphasise the need for an equivalence regime, high levels of regulatory cooperation, clarification around the legal implications and a transitional regime to facilitate a transition to an orderly post-Brexit banking environment.**

### ECONOMIC CERTAINTY

- In order to ensure economic and financial stability, the **existing strong trade and business links between the Republic and Northern Ireland need to be maintained** - with minimal impact on operations and costs.
- Clarity is also required on **the employment rights and other legal rights of Northern Irish citizens/UK citizens in Ireland and Irish citizens in the UK**. We believe that the European Union should maintain in its fullest form the UK/IE Common Travel Area in existence prior to UK and Ireland accession to the Union.

### BUSINESS CERTAINTY

- In order to maintain business certainty we believe that, above all, ***a clear and realistic transitional arrangement over a minimum period of three years*** is required.
- Additionally, the ***future agreement between the EU and the UK must be agreed as soon as possible*** in order to ensure an orderly approach and transition and thus minimise uncertainty. Such an agreement should ***allow for mutual market access based on reciprocity, equivalent regulatory standards and high levels of EU/UK regulatory and supervisory cooperation***.
- We believe that an appropriate financial services equivalence regime should be put in place for the United Kingdom across all areas of financial services legislation. The negotiations should provide clarity on how equivalence provisions in both existing and new regulations will be applied post-Brexit.
- We further believe that regulators in the UK and the EU should maintain throughout the negotiations and beyond a high-level of supervisory consistency cooperation and a commonality of approach. This is imperative in order to avoid a diminution of regulatory standards across the EU27 and something we believe the Irish Government and the Central Bank of Ireland should stress in discussions.

### LEGAL CERTAINTY

- We believe that legal certainty for bank customers and clients' needs to be guaranteed during the negotiations. The effect of Brexit on the jurisdiction of the ECJ, recognition of judgments and validity of jurisdiction clauses and how this is dealt with in transitional arrangements will have to be clarified as soon as possible to avoid legal uncertainty and to allow parties to contracts to address the consequences. **Banks require legal clarity as soon as possible on the contractual relations applicable to current financial products and early agreement on legally binding grandfathering rights for trades and contracts is imperative.**

- The implications of Brexit for **the transfer of data between the UK and the EU will have to be addressed**. Preferably, the UK will maintain an equivalent data protection regime to that of the EU. It is noted that the UK is planning to adopt and implement the provisions of the General Data Protection Regulation (GDPR) (given that the date upon which GDPR will come into effect is May 2018). Ideally, the UK would continue to retain the provisions contained GDPR. The UK and the EU will need to establish a legally-binding mechanism around data protection and the transfer of personal data as soon as possible.
- There is also a pressing need for **UK/EU and IE/UK cooperation on cyber security/anti-money laundering/terrorist financing exchange of information and intelligence** in a timely and dynamic manner before, during and after Brexit.

### **The future remains bright**

We believe that, notwithstanding some uncertainty, Ireland is and will continue to be a major international financial services centre. Ireland is currently home to 17 of the top 20 global banks, a growing international payments cluster and is also becoming a leading location for financial technology firms. Ireland intends to retain and will most likely grow its important position as an English speaking gateway to one of the world's largest markets. The banking industry here is further supported by a highly educated workforce and operates under a system of common law, sharing common legal principles with the UK (and other common law countries), within the broader framework of EU legislation.

Looking forward, we support the work of Government and Government agencies in promoting Ireland as a location for financial-services companies' post-Brexit. We welcome the approach of the Central Bank of Ireland to engage directly with industry in discussions on new operations and to focus on robust and effective regulation, facilitating market and product development, while also protecting investor interests. We also fully support the Irish Government's bid for the establishment of the European Banking Authority in Ireland and stand ready to assist in any we can in this regard.

We strongly support Ireland's membership of the EU and we will continue to be a committed interlocutor at EU level through our Brussels and Frankfurt offices as well as through engagement in the European Banking Federation, European Payments Council and European Mortgage Federation. Moreover, we strongly support EU efforts to establish a pan-European Banking Union, Capital Markets Union and Digital Single Market and believe these initiatives to be more important than ever before.

### **May 2017**

*Banking & Payments Federation Ireland (BPFi), together with its affiliate the Federation of International Banks in Ireland (FIBI), are the voice of banking and payments in Ireland, representing some 70 member institutions and associates – both domestic and international.*