

## Briefing

May 2017

## Brexit Update:

- Negotiating Guidelines
- Ireland's Position Paper
- Michel Barnier visits Dublin
- Authorisation update from the Central Bank

Brexit negotiations are likely to begin in earnest during the week beginning 19 June (after the UK General Election on 8 June). In the meantime, the priorities of the EU27, the UK, the Irish Government and Central Bank have become clearer since the [service of the Article 50 notice](#) signalling the UK's intention to leave both the EU and Euratom and the [publication of the White Paper on the Great Repeal Bill](#) by the UK Government at the end of March.

### EU NEGOTIATING GUIDELINES

The EU Council formally agreed its [Guidelines for Brexit negotiations](#) at a meeting on 29 April. As expected, key aspects of the Guidelines are as follows:

- » the four freedoms that form part of the single market (free movement of goods, services, capital and people) are indivisible, and the UK will not be allowed participate in the single market on a sector-by-sector basis, supporting some of those freedoms but not others;
- » the EU27 will negotiate on a unified basis – separate negotiations on Brexit between the UK and individual EU Member States will not be allowed;
- » the first phase of the negotiations will focus on giving legal certainty to

citizens, businesses, stakeholders and international partners, and on how to deal with the right and obligations that currently affect the UK in light of commitments made by it as part of its EU membership;

- » once “*sufficient progress*” has been made on the first phase, discussions can start on the framework of the future EU27-UK relationship and the shape of any future free trade agreement;
- » safeguarding the rights of EU and UK citizens will be an immediate priority, as will agreement on a single financial settlement and avoiding a return to a hard border in Ireland; and
- » the future location of EU agencies that are currently based in the UK will need to be settled quickly - Ireland is one of the Member States hoping to become the new base for both the European Banking Authority (EBA) and the European Medicines Agency (EMA).

### IRISH GOVERNMENT'S POSITION PAPER

Following the approval of the EU Negotiating Guidelines, the Irish Government publicly supported those Guidelines and [announced](#) the publication of its detailed position paper

([Ireland and the negotiations on the UK's withdrawal from the European Union](#)). In that position paper, the Irish Government's key priorities were highlighted as being:

- » securing Ireland's future in a strong EU;
- » ensuring the continued wellbeing of Irish citizens;
- » minimising the impact of Brexit on Ireland's trade and economy;
- » protecting the peace process and the Good Friday Agreement; and
- » maintaining the Common Travel Area with the UK.

### EXCHANGE OF VIEWS WITH EU CHIEF NEGOTIATOR, MICHEL BARNIER

The EU's chief Brexit negotiator, Michel Barnier, [addressed the Joint Houses of the Oireachtas](#) on 11 May. Acknowledging the “*unique position*” in which Ireland finds itself as a result of Brexit, he reiterated his intention to work to avoid a hard border, and emphasised the role that Ireland is likely to play in the new EU, in particular as a centre for innovation and as a key agri-food producer.

In his [response](#), An Taoiseach Enda Kenny reiterated that the Irish

Government will work to minimise the negative impact of Brexit on the Irish economy through domestic policy measures, while pursuing opportunities that may arise (including the possibility of the EBA and EMA re-locating to Ireland).

While the IMF has [recently highlighted](#) the possible “*negative and significant*” impact of Brexit on Ireland, the themes of the speeches by both Michael Barnier and Enda Kenny centred on constructive engagement and a strong EU27, and the IMF itself noted that “*timely and well-targeted action will be key*” to meeting the challenges posed to Ireland by Brexit.

#### CENTRAL BANK UPDATE

Gerry Cross, the Central Bank’s Director of Policy and Risk, provided a timely update on what the Central Bank is seeing in [remarks delivered on 9 May](#).

Endorsing the [Single Supervisory Mechanism’s recent guidance](#) on its supervisory expectations for banks hoping to re-locate to the Eurozone, he reiterated the importance of a level regulatory playing field across EU Member States, and the Central Bank’s intention to work closely with both the European Central Bank (**ECB**) and Single Supervisory Mechanism (**SSM**) to avoid any regulatory ‘*race to the bottom*’.

Gerry Cross highlighted other aspects of SSM guidance, in particular that:

- » the SSM will not allow for the grandfathering of existing approvals of internal models by the UK regulators – internal models will need to be approved by a bank’s new regulatory authority although, subject to certain conditions, banks

may be allowed to use internal models that await ECB approval on a case-by-case basis;

- » authorisation applications from “*shell companies*” will not be accepted;
- » entities that permanently book their exposures on a back-to-back basis with another group entity will not be acceptable. While temporary arrangements may be permitted, risk will ultimately need to be managed locally.

He noted that the Central Bank’s approach to authorising new businesses will balance rigour and pragmatism, focusing on ensuring that any newly-authorised entity has a substantive presence in Ireland, and supervising all entities using a firm-specific risk-based approach. For applications from large organisations, dedicated teams are being established, with shared teams being allocated to manage the application process for smaller organisations.

The Central Bank is continuing to see significant engagement from potential applicants for authorisation from the banking, insurance, investment firm, investment fund and payment institution sectors – these engagements have in many cases moved on from the exploratory stage, with several firms at pre-application or application stage. While a material increase in the number of firms authorised by the Central Bank is expected as a result, the final number is not yet clear.

#### UK GOVERNMENT

In the recently-published [Conservative Party Manifesto](#), Prime Minister Theresa May confirmed the UK Government’s position on the terms of any future

partnership with the EU as being that “*no deal is better than a bad deal*”, while emphasising the UK Government’s intention to maintain the Common Travel Area with Ireland and to ensure “*as frictionless a border as possible for people, goods and services between Northern Ireland and the Republic of Ireland*”.

If you have any queries on Brexit, please get in touch with your usual Arthur Cox contact, or any member of our [Brexit team](#).

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