



# **Brexit briefing – Euroclear group CSDs**

November 2018

## **BREXIT BRIEFING**

### **EUROCLEAR GROUP CSDS**

#### **PURPOSE OF BRIEFING**

The purpose of this briefing is to provide an overview of the impact of Brexit on the Euroclear group CSDs.

The Euroclear group operates central securities depositories (**CSDs**) in the UK and Ireland (**Euroclear UK & Ireland**), France, Belgium and the Netherlands (with the CSDs in France, Belgium and the Netherlands being collectively referred to as the **ESES CSDs**), Sweden (**Euroclear Sweden**), Finland (**Euroclear Finland**) and a CSD with a banking licence (**Euroclear Bank**). Each Euroclear group CSD provides a range of CSD services to its respective participants and clients.

For the purposes of this briefing, the reference to the **EU27 Euroclear CSDs** are to the ESES CSDs, Euroclear Sweden, Euroclear Finland and Euroclear Bank collectively (specifically excluding Euroclear UK & Ireland) and the reference to the **Euroclear group CSD** is to EU27 Euroclear CSDs and Euroclear UK & Ireland.

This briefing has been drafted on the assumption that there will be a “hard” Brexit on 29 March 2019 – which means the UK leaves the European Union (**EU**) without an agreement on the terms of its exit and/or without any agreed transition period. In the event that the UK and the EU reach an agreement on the terms of a withdrawal agreement and this provides for a transition period, Euroclear may issue a supplementary briefing at the relevant time by way of an update (although dependent on the terms of the withdrawal agreement, it is likely that, during this transition period, the UK will remain subject to EU law).

This briefing was issued on 12 November 2018.

#### **IMPACT OF BREXIT – “AT A GLANCE”**

With core operations within the EU, the potential impacts of Brexit are being closely monitored and considered. Whilst there remains considerable uncertainty around the detail and likely outcome of Brexit, both in the short and the long term, Euroclear does not anticipate any material change to its current operations and service offering of the EU27 Euroclear CSDs after Brexit.

The CREST system operated by Euroclear UK & Ireland currently provides settlement services in respect of UK and Irish securities. It also offers multi-currency settlement – which includes euro settlement. The potential impact of Brexit with regards to its post-trade services for Irish securities and the settlement of transactions in the euro is set out in FAQ 10. Other than in connection with Irish securities and euro settlement, Euroclear does not anticipate any material change to the current operations and service offering of Euroclear UK & Ireland after Brexit.

## FREQUENTLY ASKED QUESTIONS

We have set out below certain frequently asked questions that may be of interest to participants and clients of the Euroclear group CSDs.

### ADMISSION

#### ***(1) Post Brexit, can the EU27 Euroclear CSDs admit new UK-incorporated participants and clients?***

Yes, the EU27 Euroclear CSDs will continue to admit UK incorporated participants post Brexit (subject to each EU27 Euroclear CSDs' admission criteria).

#### ***(2) Post Brexit, can Euroclear UK & Ireland admit new EU27-incorporated participants?***

Yes, Euroclear UK & Ireland will continue to admit EU27 incorporated participants (subject to its admission criteria).

#### ***(3) Post Brexit, will UK-incorporated participants and clients be subject to additional admission requirements by the EU27 Euroclear CSDs?***

The EU27 Euroclear CSDs may require the submission of additional documentation from UK-incorporated participants and clients post Brexit, in line with what is currently required from participants and clients located outside of the EU. Further details can be provided by your Relationship Manager or your Commercial contact.

#### ***(4) Post Brexit, will EU27-incorporated participants be subject to additional admission requirements by Euroclear UK & Ireland post Brexit?***

Euroclear UK & Ireland does not anticipate any additional admission requirements for the admission of EU27-incorporated participants.

### MEMBERSHIP CATEGORISATION

Participants in the Euroclear group CSDs are typically categorised into various "types". The approach to categorisation varies as between each CSD – but typically the categorisation reflects the role performed by that entity or to the conditions applicable to its participation.

#### ***(5) Will Brexit have an impact on the membership categorisation of existing and/or future UK-incorporated participants and clients in the EU27 Euroclear CSDs?***

There are no anticipated changes to the membership categorisation of UK-incorporated participants in the ESES CSDs, Euroclear Finland or Euroclear Sweden.

There may be limited changes at Euroclear Bank. Certain regulated participants that are UK-incorporated, such as central counterparties and settlement systems, may be re-categorised as "specific regulated participants" (rather than the current categorisation of "standard participant"), in accordance with Euroclear Bank's *Operating Procedures*. There will be no requirement for any such existing participant to re-execute admission contracts to reflect this change. However, as a "specific regulated participant" such entities may be required to deliver additional documentation throughout their participation (for example, tax affidavits and compliance statements). If you have any questions on this matter, please contact your relevant Relationship Manager. UK-incorporated credit institutions and investment firms will remain standard participants in Euroclear Bank post Brexit.

***(6) Will Brexit have an impact on the membership categorisation of existing and/or future EU27-incorporated participants in Euroclear UK & Ireland?***

There are no anticipated changes to the membership categorisation of EU27-incorporated participants in Euroclear UK & Ireland.

**CONTRACTS**

***(7) Will Brexit have an impact on the contracts each Euroclear group CSD has in place with its participants and clients?***

There may be minor changes to each Euroclear group CSDs' client contracts as a result of Brexit. Further details will be provided by each CSD to their respective participants and clients in due course.

**SETTLEMENT FINALITY**

The EU's settlement finality directive (**SFD**) protects transactions (securities and payments transfer orders) once they have settled (ensuring that they cannot be subsequently unwound).

The SFD relies on the automatic recognition by each EU member state of each other member states' domestic securities settlement system. When the UK leaves the EU, any relevant systems located in the UK (like Euroclear UK & Ireland's UK-designated CREST system) will no longer be automatically recognised under the EU's SFD.

***(8) Will Brexit impact the settlement finality of transactions of EU27-incorporated participants in Euroclear UK & Ireland's UK settlement system?***

In accordance with the terms of the SFD, post-Brexit, the courts of an EU27 member state will not be expressly obliged to recognise the settlement finality of transactions undertaken by an EU27-incorporated participant in Euroclear UK & Ireland's UK-designated CREST system because the CREST system will (once the UK leaves the EU) fall outside of the scope of the SFD. At this stage, it is unclear whether EU law will provide for the recognition of settlement finality of transactions undertaken by EU27-incorporated participants in systems located in the UK (like the UK-designated CREST system).

However, a number of EU member states have implemented settlement finality protections into their local law (as permitted by the terms of the SFD) so as to extend finality protections to systems located in third countries (like the UK, post Brexit). Euroclear UK & Ireland will take all reasonable steps to avail itself of these protections.

***(9) Will Brexit impact the settlement finality of transactions of UK-incorporated participants in the EU27 Euroclear CSDs?***

The UK has issued legislation to enable certain systems located in the EU (including the EU27 Euroclear CSDs) to be designated in the UK for settlement finality purposes. The EU27 Euroclear CSDs will take all reasonable steps to avail themselves of these UK law protections.

## **SETTLEMENT OF IRISH SECURITIES AND SETTLEMENT OF EUROS**

### ***(10) Will Euroclear UK & Ireland continue to offer settlement of Irish securities and euro settlement post Brexit?***

It is Euroclear UK & Ireland's current intention to continue to provide Irish securities settlement and euro settlement post Brexit, for as long as it is permitted to do so. However, this remains subject to dependencies, some of which are outside of Euroclear UK & Ireland's control.

Euroclear continues to engage with relevant authorities on the ability of Euroclear UK & Ireland to offer the settlement of Irish securities and euro settlement post Brexit.

Further detail on this matter can be found using this link:

<https://www.euroclear.com/about/en/regulatorylandscape/Brexit.html>).

## **EUROCLEAR BANK SERVICES**

### ***(11) Will Brexit impact Euroclear Bank's use of UK-incorporated nominee companies in connection with its CSD services?***

Euroclear Bank does not anticipate any change to its current use of UK-incorporated nominees as part of its CSD service offering. Euroclear is not aware of any change to English law which governs corporate entities, and which would be relevant to such nominees, as a result of Brexit. The use of such nominees by Euroclear Bank should not be precluded by EU law post Brexit.

### ***(12) Will Euroclear amend the governing law in the Euroclear Bank's and ESES' collateral management contracts as a consequence of Brexit?***

Euroclear Bank and ESES CSD collateral management contracts are governed by English law – which aligns such contracts with those that underlie the collateral management arrangement. Euroclear does not anticipate there to be any change to the governing law of the collateral management contracts as a result of Brexit. Euroclear will continue to monitor the relevant legal situation post Brexit.

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The content of this briefing is strictly limited to matters connected with Brexit, and is for your information purposes only and does not form part of any contractual agreement entered into by the clients/participants and any Euroclear Group CSD. Euroclear shall not be required to update this briefing, but shall endeavour to do so, if it considers necessary.

Clients and participants of any Euroclear Group CSD are invited to contact their relevant Relationship Manager or Commercial contact should they have any specific questions in connection with this briefing.

In addition, clients and participants are encouraged to share any potential impacts they foresee to their current relationship with any of the Euroclear group CSDs - including any proposed corporate restructuring which may impact their current membership with a Euroclear group CSD or a change to their current use of the CSD services.



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