



Post-trade made easy

EUROCLEAR BANK (EB) AS LONG-TERM CENTRAL SECURITIES DEPOSITORY (CSD) FOR IRELAND POST BREXIT

Report of the Irish Working Group (WG) 3 Held on 26 FEBRUARY 2019

The attendance at this WG meeting was extended to include a range of external legal experts, from various large Irish law firms, to facilitate the in-depth consideration of the legal framework and of any legal issues arising.

Below is a summary of report of the main conclusions of WG3 meeting:

PART I: WG GOVERNANCE

- The minutes of WG2 were approved without amendment.
- WG approved the Report of WG2 for publication on Euroclear and Euronext websites.
- Euroclear indicated that it will organise a workshop with the sub working group of Registrars to go through the requirements of the SWIFT connection in detail and would share the detailed SWIFT requirements manual with the Registrars. The Registrars would undertake their own internal analysis and engage with SWIFT directly to be able to confirm their commitment quickly to operate a SWIFT connection with Euroclear given its criticality to the operating model.
- The WG heard that the Authorities needed more input from all concerned stakeholders as to why existing legal mechanisms may not be effective for migration of the market from EUI to EB. All stakeholder groups impacted by the migration should conclude their own analysis on the migration legal mechanism and seek to engage directly with the Authorities on this point.

PART II: LEGAL FRAMEWORK AND CORPORATE LAW ISSUES FOR EB AS IRISH ISSUER CSD

- Mr Twemlow advised the WG that EUI had applied to ESMA for recognition as a third country CSD, with a view to being able to continue to operate as issuer CSD for Irish securities in the short term in a no deal Brexit scenario. The application was noted as being complete by ESMA, with a decision of ESMA expected the following week.
- Further, EUI was in the process of migrating their connection from the Central Bank of Ireland Target2 connection to the ECB directly, to be able to continue to provide settlement against Euro post-Brexit. The switch would happen over the weekend of 29 March regardless of the Brexit scenario.
- The WG noted the recent speech of Minister Donohue which outlined very clearly the need for the market to complete the migration to EB within the two year emergency equivalence period.

Legal Framework for EB as Issuer CSD

- Mr Twemlow began his presentation by pointing out that the EB model, like that of most of the CSDs operated across Europe, was an intermediated model whereby the CSD held the security through a nominee, custodian or depository. Within the CSD itself, entitlements to securities were represented by way of book entries.
- As part of the proposed solution, EB's nominee would hold legal title to that portion of shares for which EB would be acting as issuer CSD.

- Euroclear Nominees Limited would appear on the register as the legal owner of securities as matter of Irish law, alongside the portion held by retail investors who would want to retain their holding in certificated form outside the CSD.
- EB Participants (unlike shareholders) would not have a direct relationship with the issuer as a matter of Irish law. The exercise of rights of the EB Participants was subject to EB's service offering under the contracts Participants have with EB.
- Internal settlement within EB between EB participants would result in a transfer of Belgian law interests and not a transfer of legal title.
- There were specific provisions under Belgian law which established the basis on which securities were held in EB. EB participants enjoy rights in securities by operation of Belgian Royal Decree No. 62.
- While Belgian Law (Royal Decree 62) could be subject to change by Parliament it was noted that the Belgian legislature has always been very cognisant of the trillions in value of securities held by a large number of international participants in EB.
- The rights of EB participants as against EB were subject to the standard Terms and Conditions as published by EB from time to time.
- The corporate action services available in EB ensure that Participants are able to enjoy the economic rights attached to securities held in the EB system. For example, to facilitate voting, EB would issue corporate actions notifications to its Participants providing information about the vote. Participants voting instructions would be recorded via SWIFT or Easyway, and would be aggregated and sent to the Registrars to act upon as issuer and paying agents.
- Satisfying super-majorities in schemes of arrangement was one area where a need for a change in the law might be needed. A solution could be to change the law to alter the requirement.
- Under the Belgian Royal Decree there was free transfer of securities. Securities would be held in EB on a fully fungible basis, and would not generally be subject to any attachment or freezing order. An order of a foreign court which would purport to forbid the transfer of securities would generally not be enforceable as a matter of Belgian law.
- EB Participants wishing to exercise rights as members/shareholders directly would need to have their holdings transferred out of EB and on to the register directly so they would become the legal owner of the securities. This could be facilitated in the EB model for Ireland.
- The bulk of the activity to reflect transfers of securities would be within EB and would not result in a change on the legal register. There would be exceptions when someone would move in and out of the holding of EB from a direct holding on the register.

PART III: ASSET SERVICING IN EB

- Safekeeping of assets in EB is based on the following three principles: Information provision, Operation processing and Reporting of results
- EB applies a policy of same day turnaround of information, that is, if the information was received before 4pm CET, it was passed on to the participants on the same day.
- EB expects to be able to process all existing types of corporate actions for Irish securities, in some cases this would be done differently compared to EUI but with the same end result.
- EB's tariffs for corporate actions processing would be covered as part of the general tariff discussion in WG4.
- EB receives the information relating to corporate actions in ISO SWIFT standard format from the Registrars in their capacity as issuer and paying agent. The Registrars would be responsible to pass on the information to EB as soon as they receive it from the Issuers.
- EB credits cash on corporate actions to its Participants in EB and there is no option to receive the cash outside of EB.
- Timing of cash payments to Participants depends on reconciliation with cash correspondents, currency prioritisation rules and market closing times.
- In respect of Withholding tax, EB is a qualified intermediary (QI) in Ireland and could therefore provide relief at source provided all parties in the chain are also QIs. EB was not planning on becoming an authorised withholding agent for Ireland.
- On elective event corporate actions, EB aligns on the default option determined by the Issuer/Registrars where it does not receive the Participant instruction within the time required.
- The WG reviewed in detail individual "standard" corporate actions in EB and how they would operate in respect of Irish corporate securities.

PART IV: TIMELINE AND DRAFT WHITE PAPER

- The overall project timeline was presented as a work in progress for discussion.
- The Authorities have asked to see the project timeline at the next Steering Board.
- It was critical that all legislative changes are agreed upon urgently to give the Authorities necessary time to consider and implement them.
- The timeline showed the expected actions for each of the constituencies and input was sought from all WG members and their constituencies as to their stated actions, timing and any points that they thought were missing from the draft timeline.
- The objective remains for Euroclear to issue the White Paper before the end of March describing the framework for how EB would operate as the issuer CSD for Irish corporate securities as agreed in the WG. More detailed documents would be worked up throughout the project lifecycle and an appropriate governance would be put in place to oversee the move of CSD from a market perspective.