

PUBLIC

**Minutes of the Meeting of the Irish User Committee
of Euroclear UK & Ireland ("EUI")
("Irish UC" or the "Committee")
held on Thursday, 24 January 2019 at 4:30pm
at the offices of
Davy Group, 49 Dawson Street, Dublin 2, Ireland**

PRESENT: Brian Healy (Chair); Robert Davis; Ronan Deasy; Stephen Dwyer; Albert Farrell; Donald Halligan; Niall Harrington; Joe Molony; Darren Murray; Aidan O'Carroll; Mary Poole; Peter Stewart.

APOLOGIES: Neil Colgan; Sue Concannon; Stephen Judge; Neil Sharp; David Todd; Sinead Kelly; David Trost.

EXTENDED INVITEES: Niall Gibney; Stephen Empey.

IN ATTENDANCE: Deirdre Feely; An Mestdagh; Jennifer Parker (Secretary); Charles Pugh; Susan Stenson; John Trundle.

1. Welcome from Chair and Market Update

The Chair welcomed the attendees to the meeting. He confirmed that the first meeting of the Euroclear Bank CSD Working Group (the "**EB CSD WG**") had taken place earlier in the day, for which an update would be provided under agenda item 5.2.

2. Conflicts of Interest

All members confirmed, in response to an enquiry from the Chairman, that no conflicts of interests arose or needed to be declared.

3. Minutes

The Minutes of the meeting held on 13 November 2018 and of the ad hoc meeting on 20 December 2018 were **APPROVED** unanimously.

4. Terms of Reference ("TOR")

Ms Parker presented the proposed updates to the Committee TOR, together with the CSD User Committee Conflicts of Interest Policy (the "**Conflicts Policy**") as appended. These were subject to annual review, with the current changes being minor in nature. She stated that in accordance with CSDR, the Committee minutes and TOR would be published on the EUI website.

After consideration of the documents the Committee **APPROVED** and **ADOPTED** the updated TOR and Conflicts Policy.

5. Post-Brexit CSD and Settlement

The Chairman provided an overview of the progress achieved over recent weeks, noting both the frank and productive discussions at the 20 December 2018 meeting and the significant progress made in January with the structuring and convening of the Working Group and the Steering Board as well as numerous meetings with the Authorities and with other stakeholders. He also noted the extent of the work undertaken and the progress achieved on ensuring continuity of EUI service provision post 29 March. He then invited Mr. Trundle to brief the meeting on the latter.

5.1 ESMA Equivalence Application

Mr Trundle reminded the Committee of the actions being taken by EUI to ensure that, in the event of a hard Brexit, EUI would maintain the ability to: (i) act as the CSD for settlement of Irish corporate securities and ETFs; and (ii) offer euro cash settlement. If there was a soft Brexit, the status quo was expected to remain throughout the transition period.

Mr Trundle noted that the conditional equivalence route offered by the European Commission, for recognition as a third country CSD, had been taken and EUI had submitted its equivalence application to ESMA on 23 January 2019. Mr Trundle further noted ESMA's formal approval process, with their next scheduled meeting due to be held at the end of March. Accordingly, EUI would review with ESMA whether a decision could be reached sooner. He confirmed that, in a hard Brexit scenario, the equivalence recognition would enable EUI to act in the short-term (two years) as CSD for Ireland.

Mr Trundle updated the Committee on EUI's discussions with the European Central Bank (the "**ECB**") regarding EUI's ability to continue to offer settlement in euros following Brexit. He noted that EUI was reviewing direct connectivity as an ancillary system to the ECB/TARGET 2 in place of the current link via the Central Bank of Ireland ("**CBoI**"). The analysis to date indicated that the required technology changes on the EUI side were likely to be minor.

Mr Trundle noted that a legal review of the proposed contractual arrangements between EUI and the ECB was ongoing and that the revised contractual terms would need to be reflected in updated contracts between EUI and the settlement banks. The proposed ECB contract was its standard form contract for ancillary systems and Mr Trundle confirmed that, although productive discussion had been held with the ECB, there was expected to be little movement from it on key provisions relating to liability and German law as the governing law of the contract. These provisions were different from the current contract with the CBoI, which was subject to Irish law and included a cap on EUI's liability. He noted that the matter had been discussed at the EUI Settlement Bank Committee and all parties were committed to making progress as quickly as possible given the short time frame.

Mr Trundle added that consequential changes were also likely to be required to the CREST rules. As any such rule changes required 40 days' notice, and with only 64 days remaining until 29 March, progress needed to be made quickly.

Mr Stewart referenced the US settlement banks providing euro settlement and expressed concern that, if the settlement banks would be asked to accept uncapped liabilities, there would not be sufficient time to get the necessary approvals from the Office of the Comptroller of the Currency (the "**OCC**"). In such circumstances, it was therefore possible that US settlement banks would not be able to continue to offer euro settlement until receipt of the necessary OCC approval.

Mr Trundle stated that, from EUI's point of view, there had been a lot of progress since the previous User Committee meeting, with a strong will from all parties to finalise the position. Nevertheless, the Brexit outcome could not be predicted and there was still a requirement to plan for a hard Brexit contingency.

The Chairman thanked Mr Trundle for the update and queried if there was any margin for negotiation with the ECB on the scope of liability. Mr Trundle confirmed that the matter had been discussed with the ECB but that if there was a fundamental change required to the ECB contract, this would have to go through the ECB's Governing Council, which would further protract the process. Mr Trundle added that EUI's own governance process would also need to be followed, including

EUI's risk assessment and due diligence, as the proposed changes in liability arrangements would change EUI's risk profile.

Mr Trundle confirmed that the Bank of England (the "BoE") was fully up to date on the matter and would also follow its own governance process.

The UC noted the current status and welcomed the progress made.

5.2 EB CSD WG Session on Longer Term Settlement

The Chairman outlined the extent of the market engagement and of the discussions within the Working Group, and constituency sub-groups, on the longer term CSD model. He confirmed that the first meeting of the EB CSD Working Group had been held earlier that afternoon. He firstly noted the composition of the Working Group of 10 members, representing the different segments of the market. He also noted that Paul Egan, consultant at Mason Hayes & Curran and Chair of the Company Law Review Group, had agreed to be the legal representative on the WG.

The Chair reported that there had been good and detailed discussions at the WG. This had included approval of: the WG structure and composition, himself as Chairman, the schedule and content of future meetings and the communications approach to the wider market. He noted that the TORs of the Working Group and of the Steering Board had been agreed. It was further noted that, as required, additional representatives might attend WG meetings, for example, the Revenue Commissioners (the "RC") would be invited to attend Working Group sessions three and four. The Chairman then asked Mrs Stenson and her EB colleagues to provide further detail on the matters discussed at the earlier WG meeting.

Mrs Stenson first commented on the discussion regarding the EB holding model and the requirements for qualifying as an EB participant, noting that of EUI's 114 users, 55 were already EB participants. She noted that eligibility of securities and costs had also been discussed. It was noted that the next WG session would consider account structure and other aspects, such as connectivity.

Mrs Stenson noted that there had also been discussion regarding the legal framework and it had been agreed that a separate session covering the legal framework would be organised.

Mrs Stenson outlined that four Working Group meetings which had been scheduled, for 6 February, 26 February and 11 March 2019, together with the legal framework session. Work plans for each meeting had been determined, with minutes to be made available to the Committee and the Steering Board, and with a report of each meeting to be published to the broader market.

In response to an observation from Mr Halligan, Mrs Stenson provided context to the Authorities' participation at the Steering Board as observers. She noted that there would also be parallel meetings with the Authorities each time the EB CSD WG convened, with the agreement of the CBoI, the Department of Finance and the RC. This was an important part of the process. The RC would be invited to attend the EB CSD WG when Stamp Duty and Dividend Withholding Tax considerations would be discussed, and they were also being engaged with regularly outside this forum.

Mrs Stenson confirmed that EB had committed all necessary resources to the development of EB services as the long term CSD and settlement solution for Irish securities by March 2021, which the Authorities had made clear was their expectation. The EB CSD WG had discussed the possibility of the Brexit landscape changing and a potential reversion to the EUI model. However, it had been agreed that the EB solution was now the base case scenario, and the Committee noted this

and agreed that it was necessary to move forward with this as the long term solution.

Mrs Stenson noted that the Authorities had made clear their expectation that the market should have agreed the shape of the EB solution by mid-March. Much work would be involved in getting into the detail of the model. This would require a collaborative and pragmatic approach by all. The Chairman noted, and it was agreed by the WG members present, that this was the spirit prevailing at the first meeting of the EB CSD WG and in the various bilateral engagements in January. He also noted the challenge posed by the tightness of timeline to produce the White Paper, with seven weeks left to define the long term model.

Mr Stewart noted that this timeframe would be too short to agree a fully articulated solution, but it should be possible to reach a substantive proposal, which could then be refined through further iteration. Mrs Stenson agreed that the final solution may not be fully agreed by mid-March, but the objective was for all critical elements to be identified and discussed through the EB CSD WG process. The Committee noted that EB would require time to develop the necessary changes and that in reality, EB would only have 12 months to do so, as during the latter 12 months, the market would need to build and test their own solutions.

Providing further details regarding discussion at the EB CSD WG, Mrs Stenson noted that there had been changes to the proposed EB holding model as issuer CSD for Ireland compared to the initial proposal. Constructive discussions were ongoing with the registrars, and the issuers had also given positive feedback on the revised approach. The first WG sessions would focus on the changes to the holding model and the interaction between securities held in EB and registered in the name of the EB nominee and securities held outside the CSD and recorded on the registers maintained by the registrars.

Ms Mestdagh advised that further investigation was required regarding corporate actions (including voting and voting rights) and Stamp Duty. These issues would be further addressed in the third and fourth EB CSD WG meetings.

Mrs Stenson noted that a key point regarding the proposed holding model centred on the eligibility of Irish securities in EB. All Irish securities currently held in EUI were being investigated to ensure they were eligible in EB. From the initial analysis, it appeared that this was the case but further work would need to be undertaken.

Ms Mestdagh confirmed that further analysis would also be required regarding the eligibility of current EUI participants for admission as EB participants. The main issue related to CREST personal member accounts, as individuals would not qualify as participants in EB. Analysis indicated that participants holding approximately 97% in value of Irish securities in EUI would be eligible as EB participants. Participants holding the remaining 3% by value could be offered the option to continue to hold Irish securities in EUI as CDIs, to appoint a custodian or to hold directly on the register. These options would be further discussed with the impacted personal members/their CREST sponsors.

With regard to the legal framework discussions, Mrs Stenson noted the complexities of adapting EB's civil law processes to work with Ireland's common law shareholding structure. One key point related to the status of EB under the Irish Uncertificated Securities Regulations (USRs) and Mrs Stenson outlined that EB would not be deemed an "operator" under the USRs as there would not be a transfer of legal title on the register. The rights that an EB participant would have over Irish securities held in EB would be different from the rights currently enjoyed with "name on register", with the future right, under Belgian law, being a beneficial interest in a

fungible pool of securities in EB. This represented a substantial change to the current holding model and would require a significant effort on both communications and education of participants in the Irish securities market ecosystem.

The Committee agreed to the importance of holding a dedicated session on the legal framework and that how this should be progressed should be a matter of priority.

The Chairman noted the importance of communications with the broader market and the Committee agreed noting that direct and transparent communications with stakeholders would be critical to success. Mrs Stenson confirmed that minutes, terms of reference, the White Papers and other relevant documents would be made publicly available on the Brexit section of the Euroclear website.

Mr Halligan stated that registrars, issuers, etc. were keen that dematerialisation would be facilitated under the new model. This should be referenced in the White Paper being prepared as part of the longer term project, although Mrs Stenson added that dematerialisation could not be put on the critical path of the project.

The Chairman in concluding the discussions on the topic noted that the next EB CSD WG meeting would be held prior to the next User Committee meeting and that meeting report would be available for sharing with the Committee.

6. CEO Update

The Chairman suggested that the CEO update be taken as read and he invited Mr Trundle to provide an overview. Mr Trundle stated that CSDR had been dominating the focus of management, alongside Brexit, operational reliability and resilience. He confirmed that a product update would be provided at the next meeting.

Mr Trundle highlighted that EUI's operational reliability targets had been reached in 2018. The service resilience target of 100% was achieved, with 99.90% reached in respect of system availability (above the target of 99.80%). There were no issues to report for 2019 YTD.

Mr Trundle confirmed that there were no relevant audit findings to bring to the attention of the Committee.

Mr Stewart observed that diary extensions seemed to be granted more often than previously and queried what action EUI took to minimise this. Mr Trundle noted that EUI reviewed all extension requests, although there was no evidence of a particular trend. He confirmed that there was ongoing market operational oversight and dialogue with users. When considering an extension request, the duty manager in charge would consider the interests of the market as a whole and the circumstances of the firm requesting an extension.

In response to a query from Mr O'Carroll, Mr Trundle confirmed that EUI shared details of all extension requests with both the operational and regulatory teams at the BoE. EUI also provided analysis of patterns and details of the relationship with clients in monitoring their performance.

Mr Trundle highlighted the chart in the CEO report which summarised the extensions granted to benchmark diary events and noted a cluster of six extensions in December 2018.

7. CSDR Update

Mr Pugh reported that work continued on the CSDR application. Delivery of the first set of articles was due on 1 February 2019, with work progressing on subsequent submissions through to mid-2019.

With regard to settlement penalties, preliminary design work had commenced. Most client facing changes were currently planned to be delivered in the software release in November 2019, followed by a business launch in March 2020. Certain changes to the system would require additional work, such as tolerance matching, with such release anticipated in June 2020.

Mr Pugh advised that the Settlement Penalties Working Group (the "**SPWG**") was expected to recommence in Q1 2019, with client roadshows occurring throughout 2019 and 2020. Discussions at the SPWG would include planning, the November 2019 software release and new messaging for CCPs. Mr Pugh confirmed a live date of 14 September 2020 in respect of settlement penalties.

Mr Stewart asked whether the previous simulations of the expected impact of the new settlement discipline regime had been re-run. Mr Pugh confirmed that, as there had been no material changes to the proposed regime, the calculations had not been run again. However, if this were to be done, he would not expect much variance. He noted that in any event, the market was expected to change substantially (for example, with buy-ins), such that it would be very difficult to build an effective model of the "to be" position.

The Chairman observed that the settlement discipline regime in EUI was currently viewed as a cost of doing business and that the new CSDR SD and buy-in regime was markedly different. He noted that the impact of the new requirements would bring about a step change in how market participants managed this area of their operations and he also noted the impact of these changes with the fundamental infrastructure change underway in the Irish market over the same timeline, referencing item 5 above.

8. Disclosure of Relevant Audit Findings to the Committee

The Committee noted the presentation regarding the process supporting the disclosure of relevant audit findings to the Committee pursuant to CSDR. Ms Parker confirmed that the presentation was in furtherance of a previous Committee request and that she would give an overview as Mr Zapita, EUI's Chief Internal Auditor, was unable to attend the meeting. If the Committee had specific questions, Ms Parker agreed to refer these to Mr Zapita.

Ms Parker outlined the Article 52 CSDR requirements related to the sharing of relevant audit findings with the Committee. This was required where the findings: (i) related to the criteria for accepting issuers or users to their respective securities settlement systems operated by the CSD; (ii) related to any other aspect of the Committee's mandate; or (iii) may impact the level of provisions of services by a CSD, including ensuring business continuity. There was one qualification to the provision of relevant audit findings; these would not be provided to members of the Committee where it would place them in a position of competitive advantage.

Ms Parker confirmed that the Internal Audit plan was reviewed annually at both EUI Audit Committee and Board level, with approval provided by the EUI Board. Where any relevant findings were identified in an audit, a draft report would be prepared, following the process outlined in the presentation. This would include a) consideration by the EUI Management Committee, including an assessment against the competitive advantage consideration; b) presentation of the audit findings to the EUI Audit Committee. Relevant audit findings would therefore be reported to the UC a quarter in arrears to ensure the full EUI governance process was followed.

ACTION: Internal Audit Presentation: The Committee requested that internal audit provide an annual update to the Irish UC, including an overview of its annual audit plan. To be scheduled for 25 June 2019.

9. Date of Next Meeting

The Committee **NOTED** that the date of the next meeting was 12 March 2019.

10. Any Other Business

There being no further business, the Chairman closed the meeting.



Signed: Brian Healy
Chairman