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Preparing for applications under PSD2 and regulatory implications stemming from Brexit

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Good morning ladies and gentlemen. I would like to thank the IDA for the invitation to speak at today's event and share with you some thoughts and perspectives from an EU competent authority.

The Central Bank of Ireland (Central Bank) is the competent authority in Ireland for the authorisation and supervision of Payment Institutions (PIs) and Electronic Money Institutions (EMIs) under the Payment Services Directive (PSD) and the Electronic Money Directive (EMD). It will be the competent authority in Ireland under PSD2 once that Directive is transposed into Irish law. These regimes, which provide for authorisation to provide services across the EEA, are the ones I am going to speak about today. We are also the competent authority for many other regulated financial services in Ireland, including others with EU aspects. My comments this morning do not pertain to those other regimes.

In virtually every sector of EU regulated financial services, we have seen or are seeing the implementation of significant legislative changes driven by EU regulatory directives, in this case PSD2. These initiatives are underpinned by extensive detail issued (or to be issued) by the European Supervisory Authorities, in this context the European Banking Authority (EBA). Add to this the uncertainty arising from Brexit, and one can see that this is a challenging period indeed for regulated firms and regulators alike.

There are two points from this that I would like to highlight in the context of your discussions today. These are:

- The recently published EBA Guidelines on the information to be provided for authorisation and registration under PSD2; and
- The fast approaching implementation date for PSD2 of 13 January 2018.

The Central Bank

However, before speaking about PSD2 specifically, I should say a little about who the Central Bank is and what we do. Even within the context of EU regulation, regulatory structures and mandates differ from one jurisdiction to the next.

The regulatory objective set by Irish law for the Central Bank is the proper and effective regulation of financial service providers and markets, while ensuring that the best interests of consumers of financial services are protected¹. In the PI/EMI sector (as in others), a robust and assertive regulatory regime is in the interests of all: consumers, the industry and the wider economy. The Central Bank's contribution to the world of FinTech in Ireland is to provide this robust framework, so that firms and consumers can proceed with confidence. This means only authorising those firms that clearly meet the standards of EU law and, once authorised, requiring those firms to demonstrate to us that they continue to meet these standards in a manner that ensures that the best interests of their customers are protected.

It also means continuously seeking to ensure that the framework of rules in place serves consumers' best interests. Here, the Central Bank has long recognised the importance of working at both a national, EU and an international level, including through global bodies such as FinCoNet and the G20/OECD Task Force on Consumer Protection. Increasingly, of course, our work is also done at a European Supervisory Authority level. As a single consolidated regulator of financial services in Ireland, the Central Bank is present at each of the three European Supervisory Authorities and their Joint Committee. In a PSD2 context, for example, we are active participants at both the EBA Standing Committee on Consumer Protection and Financial Innovation, the Taskforce on Payment Services and the EBA/ECB Forum on the Security of Retail Payments, as well as sitting on the EBA Board of Supervisors of course.

There are currently 13 payment institutions authorised by the Central Bank and 2 e-money institutions. There are also 554 payment and e-money institutions who have notified us of their exercise of passporting rights into Ireland from other Member States. In terms of supervision, the Central Bank uses a risk-based framework known as the Probability Risk and Impact System (PRISM) in its supervision of regulated firms' compliance with the applicable prudential requirements, including those applying to payment and e-money institutions². This is underpinned by a range of

¹ Section 6A, Central Bank Act 1942

²See also Prudential Requirements for Payment Institutions and E-Money Institutions at:

supervisory tools and strong powers to enforce regulatory requirements, including our recently published Consumer Protection Risk Assessment (CPRA) model for assessing firms' consumer risk frameworks across topics such as culture, performance management, sales incentives and product oversight and governance.

Finally, our Authorisations or 'Gatekeeper' function.

In plain terms, an applicant seeking authorisation must satisfy the Central Bank that it is able to fulfil the obligations of such an authorisation as set out by the relevant EU directive and transposed into Irish law. It is the demonstration by a firm of its compliance with these requirements that provides the basis for that firm to provide its services in Ireland and other Member States. Clearly, therefore, this function is very important and it is a responsibility we take seriously. In fulfilling this statutory role, the Central Bank adopts a structured, robust and risk-based process that seeks to ensure that only those firms that demonstrate compliance with these authorisation requirements are authorised.

The Central Bank welcomes therefore the publication by the EBA in July of its Guidelines on the information to be provided for authorisation as a payment institution or e-money institution and for registration as an account information service provider under PSD2³. The Central Bank was heavily involved in the development of these EBA Guidelines, as one of the EU competent authorities with particular experience in this field, and given our commitment to a consistently robust and effective approach to regulation across the EU.

The EBA Guidelines

The EBA Guidelines specify the type of information that applicants are required to submit to fulfil the requirements set out in PSD2. This includes information on the applicant's programme of operations and its business plan, the measures it will take to safeguard users' funds, its anti-money laundering controls, structural organisation, statutory auditors, qualifying holders, and the identity of directors and persons responsible for the management of the applicant and its regulated activities.

It is worth noting that the Guidelines were issued by the EBA further to an explicit mandate conferred on the EBA in Article 5(5) of PSD2 to *"issue guidelines [...] concerning the information to be provided to the competent authorities in the application for the authorisation of payment institutions...."*

<https://www.centralbank.ie/docs/default-source/Regulation/industry-market-sectors/payment-institutions/supervision-process/prudential-requirement-for-payment-institutions.pdf?sfvrsn=4>

<https://www.centralbank.ie/docs/default-source/Regulation/industry-market-sectors/Electronic-Money-Institutions/Authorisation-Process/gns-4-4-7-3-emi-prudential-requirements-december-2011.pdf?sfvrsn=0>

³<https://www.eba.europa.eu/documents/10180/1904583/Final+Guidelines+on+Authorisations+of+Payment+Institutions+%28EBA-GL-2017-09%29.pdf/f0e94433-f59b-4c24-9cec-2d6a2277b62c>

It is also worth noting that the Guidelines are issued under Article 16 of the EBA's founding Regulation, and what that Article states. Article 16 provides that the EBA *"shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and ensuring the common, uniform and consistent application of Union law, issue guidelines ... addressed to competent authorities or financial institutions"*. It goes on to say that *"competent authorities and financial institutions shall make every effort to comply with those guidelines..."*.

As such, therefore, the Guidelines represent a significant formal step towards a more uniform approach to the information required of firms when applying for authorisation as a payment or e-money institution, regardless of the jurisdiction where they choose to establish themselves. Together with the other EBA mandates under PSD2 on which we are working with the EBA and our National Competent Authority colleagues, this all contributes to a more harmonised approach to financial regulation. This means firms should make their location decisions on the basis of reasons other than differing regulatory approaches.

The fast approaching implementation date for PSD2 of 13 January 2018

I referred at the outset to the fast approaching implementation date for PSD2 of 13 January 2018. In Ireland, the Department of Finance is working on the legislation to implement PSD2 by this date⁴, and the Central Bank provides it with technical advice and assistance in this exercise (as we do on the transposition of all such regulatory directives).

We are also conscious of this impending timeline in terms of our own implementation of the EBA Guidelines. At the Central Bank, we intend therefore to publish revised application forms that meet the EBA Guideline standards in the coming weeks, along with guidance on how to complete them. Since PSD2 is not yet transposed into domestic law, these forms will remain technically draft and open to comment from stakeholders for a period. Nevertheless, we will accept applications based on these forms from the time of their publication in draft. In doing so, we are recognising the reality that any application for authorisation we receive from now on can be expected to fall for decision under the Irish legislation transposing PSD2, rather than PSD1.

Notwithstanding the increased level of information required by PSD2, the Central Bank intends to stick to the rigorous time-bound assessment process we devised for PI/EMI applicants and launched on 16 October 2015 (well before any Brexit referendum). This was aimed at ensuring a clear, straightforward and facilitative process for firms seeking authorisation in Ireland, while continuing to meet our obligation to operate a rigorous and effective gatekeeper function.

⁴ <http://www.finance.gov.ie/what-we-do/banking/payments/payment-services-directive-2/>

The various stages of the application process are as follows:

Stage 1 - Acknowledgement

The Central Bank will acknowledge receipt of the application within **3 working days**.

Stage 2 - Key Information Check

The Central Bank will then check that the application material submitted contains all the key information and documentation required to proceed to the assessment phase. We will confirm whether or not this is the case within **10 working days** of receipt of the application. If the application is lacking any key information, we will identify the omitted information and the applicant can then decide to re-submit.

Stage 3 - Assessment Phase

Where the Key Information Check has been passed, the Central Bank will commence assessing the application against the authorisation requirements. We will issue initial comments for response by the applicant, and any subsequent comments based on our review of the applicant's responses. The service standard timeframe to which the Central Bank has committed for the assessment phase is **90 working days**. However, it should be noted that in the event of further information being sought (which is normally the case), this 90 day 'clock' is paused until such information is received by the Central Bank from the applicant.

Dormancy

Once an applicant files an application with us, we expect the applicant to proceed promptly with that application. We cannot make decisions on information that is out of date. To this end, we operate a defined dormancy policy. If an applicant fails to respond to a request from the Central Bank for further information, after **60 working days** we will deem the application dormant and not consider it further.

Stage 4 – Notification of Assessment

At the end of the 90-working day assessment period, the Central Bank will notify the applicant whether or not our assessment is favourable. Where it is favourable, the Central Bank will notify the applicant of the final steps to be taken before an authorisation will be granted (the 'pre-conditions' to authorisation). We will also set out any specific conditions the Central Bank proposes to impose on the authorisation itself once granted, along with the reasons for these conditions. Applicants are afforded the opportunity to make representations in respect of these conditions before we make our decision.

If the Central Bank is not satisfied on foot of the Assessment Phase, we will set out the areas to be addressed.

Stage 5 - Notification of Decision

Once the Central Bank has assessed any further material from Stage 4, we notify the applicant of our decision. In the case of a decision to grant an authorisation, this letter will also set out any specific conditions attached to the authorisation, including having considered any representations from the applicant during Stage 4. We aim to issue this notification within **10 working days** of the pre-conditions to authorisation being satisfied.

In a case where the Central Bank is minded to refuse the application, the Central Bank will notify the applicant of the proposed grounds for refusal and the next steps in that process. These steps will include an opportunity for the applicant to make submissions in response to the proposed refusal.

Preparing to make an application

The Central Bank offers firms the facility of an optional pre-application meeting, to answer questions about the application process and completing the application form. In order to make the meeting as productive as possible, we recommend that firms who wish to avail of this facility first complete their application material to an advanced state and have their specific questions prepared in advance. This meeting can be an opportunity to hear from the authorisation team some of the more practical aspects that can detract from the quality of an application. These include not taking care to follow the guidance provided on the completion of our application forms, including information not asked for, and unclear referencing, acronyms, technical or bespoke terminology.

We also encourage firms to be frank and realistic in setting out their expectations of how the business will perform in its early stages, as well as whether the proposal is to provide all services from day one or to stagger them. We sometimes see applicants putting forward various phases and versions of a product offering where it would be a stronger application to focus simply on what the business will be on day one.

Conclusion

I appreciate that the themes of today's event are those of change, be that the advent of PSD2 or (for firms here in the UK) that of Brexit. However, some things remain the same regardless. The service of getting people's money safely from one part of the world to another will continue to play an important part in people's lives, and the risks posed to consumers where this is not done properly will remain as they have always been. This places an onus on firms to demonstrate that they meet the required standards, including the enhanced standards of PSD2, and do so in a manner that seeks to ensure that the best interests of consumers are protected. The Central Bank is committed to playing its part in Ireland, the EU and internationally in ensuring that the highest standards are set and met. I hope that

my outline of our work for you today has helped you gain an understanding of the Central Bank of Ireland and its role.

I am happy to answer any questions you may have.