

Minutes

Meeting date: 28 February 2019, 16:00 – 17:00

Location: HM Treasury, 1 Horse Guards Road, SW1A 2HQ, Room GE/01

Attendees

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| HM Treasury | Sarah Pemberton (chair), Theodore Read (secretariat), Robert Brown, Daniel Hugh Jones |
| Bank of England | Adam Cull, Clare Merrifield |
| Prudential Regulation Authority | Jonathan Sepanski |
| Financial Conduct Authority | Hugh-David Hutchenson |
| Financial Services Compensation Scheme | Casey McGrath |
| UK Finance | Parisa Smith |
| Building Societies Association | Jeremy Palmer |
| City of London Law Society | Dorothy Livingston |
| Association for Financial Markets in Europe | Oliver Moullin |
| Financial Markets Law Committee | Venessa Parekh |
| International Swaps and Derivatives Association | Ciarán McGonagle |
| KPMG UK | Mike Pink |
| Freshfields Bruckhaus Deringer | Michael Raffan |

Update on HM Treasury EU-Exit Statutory Instruments (SIs) – agenda item 1

1. The Treasury provided an update on progress in making all the necessary legislation to ensure that, in the event of a “no deal” exit on 29 March 2019, there was a functioning legal and regulatory regime for financial services from Day 1. Fifty Treasury financial services SIs needed for exit day had been laid in Parliament, with forty-one of these having been debated, as of Wednesday 27th February 2019. This included SIs introducing the Temporary Permissions Regime, the Temporary Recognition Regime for central counterparties, and SIs making corrections to MIFID (Markets in Financial Instruments Directive), CRR (Capital Requirements Regulation) and BRRD (Bank Recovery and Resolution Directive). The Treasury further noted that all EU-Exit SIs were designed to prepare for the possibility of a no deal exit. This legislation would not come into effect on exit day if the UK entered an implementation period.
2. The Treasury also provided a specific overview of the necessary changes to legislation made in relation to the BRRD and DGSD (Deposit Guarantee Scheme Directive), as both Directives were particularly relevant to the updating of the SRR (Special Resolution Regime) Code of Practice (‘the Code’).
3. In relation to the BRRD, the Treasury noted that there were references to the BRRD throughout the Code, as well as references to UK legislation (such as the Banking Act 2009) which was amended during the transposition of the BRRD. Reviewing the EU-Exit SI made in relation to BRRD, the Treasury noted how this SI made changes to fix deficiencies in UK legislation as a result of the UK’s withdrawal from the EU and, in line with the no-deal scenario the SI was designed for, also amended UK legislation to treat the EEA (European Economic Area) as a third country. Specifically, the SI amended the scope of the UK’s framework for recognising third country resolution actions in Section 89H of the Banking Act to include EEA-led resolutions. It also removed requirements for UK regulators to follow the specific operational and procedural mechanisms in the BRRD to cooperate with other EEA authorities. The Treasury noted that these changes were particularly relevant to Chapter 10 of the updated SRR Code of Practice.
4. On the EU-Exit SI made in relation to DGSD, the Treasury noted that there were also references to the role of the UK’s deposit guarantee scheme, the FSCS (Financial Services Compensation Scheme), throughout the SRR Code of Practice. The Treasury reviewed how the DGSD EU-Exit SI transferred coverage level setting power from EU institutions to UK institutions and how the PRA (Prudential Regulation Authority) would have the power to review, adjust and set the deposit coverage level with approval from the Treasury. The SI also removed the arrangement whereby the FSCS administered compensation payments to depositors at UK branches of EEA credit institutions on behalf of an EEA deposit guarantee scheme. The SI also removed the requirement on the PRA to notify the EBA (European Banking Authority) each year of the amount of deposits in the UK which were covered by the FSCS and the funding available to the FSCS. The PRA would also no longer have to notify the EBA of any agreements between the FSCS and other EEA deposit guarantee schemes.
5. A Panel member raised the recognition by the UK of third country bank insolvencies after exit in a no-deal scenario and whether the Code of Practice should highlight this. The Treasury indicated they would be happy to consider this suggestion and invited the member to follow up with their suggestion in writing.

Updating the Special Resolution Regime Code of Practice – agenda item 2

6. The Treasury outlined four specific areas where changes had been made to the Code, and invited comments from Panel members on each of these in turn.
7. The Treasury first raised the approach taken in replacing references to EU legislation in the Code. A general reference had been inserted in the introduction to the Code (para 1.5) noting that references to legislation were to legislation as amended. In particular, references to retained EU law were to that legislation as retained in accordance with the EUWA (Withdrawal Act) 2018 and amended in accordance with the EUWA. The Treasury also included footnotes in relation to retained EU law in other parts of the Code. The Treasury suggested this would provide clarity for readers, particularly by avoiding mistaken references to the EU versions of those Regulations.
8. Panel members were broadly supportive of the approach taken to replacing references to EU legislation, suggesting it would be helpful to the reader.
9. The Treasury then raised the approach to references to third countries, including EEA countries. The Treasury noted that this update to the Code was intended for a no-deal scenario in which the UK and EU would default to treating each other as third countries, and that the Code had been updated to reflect this. A footnote in Chapter 10 explained that the use of the term 'third country' originated from when the UK was a member of the EU to indicate countries outside the UK and the EEA. This term was still used in the Code, but this footnote made it clear that this now just referred to a country or territory outside the UK.
10. A Panel member suggested that it may be helpful to include a reference in the Code to the relationship between resolution and insolvency for third country banks. The Treasury indicated they would consider inclusion of this point in the Code.
11. A number of Panel members suggested that it may be useful to include further reference to the importance of international cooperation on resolution, particularly following EU-exit. This could reaffirm UK commitments to international G20 standards. A Panel member also asked whether there could be a reference to the consistency between UK and EU resolution regimes. The Treasury indicated they would consider inclusions on both points in the Code.
12. Thirdly, the Treasury raised the inclusion of an additional section on the RLF (Resolution Liquidity Framework). This had been included in Chapter 11 of the Code. While this was not an EU-exit related change, the RLF had not been introduced the last time the Code was updated. The Treasury were therefore taking this opportunity to include a section describing the RLF. The inserted section followed the description of the RLF in the Bank of England's 'The Bank of England's Approach to Resolution' publication, covering why liquidity in resolution may be necessary, how the Bank would provide liquidity in resolution, and any obligations that the Treasury/Chancellor may have (i.e. if there were to be any implications for public funds).
13. Panel members considered the new section on the RLF helpful, and supported its introduction.
14. Finally, the Treasury raised the updates to the general principles of resolution section. The Treasury outlined how the 'General principles of resolution' section was intended to

provide a clear expression of the UK's principles of resolution. Previously, this section included a reference to Article 34 of the BRRD. It had been removed, as the BRRD would no longer have effect in the UK.

15. Panel members found this to be a helpful section which provided a UK expression of the principles of resolution in the absence of the BRRD.
16. The Treasury then invited any further comments aside from these four specific areas on the proposed updates to the Code.
17. A panel member suggested an update to section 6.84 of the Code on procedural requirements, suggesting that the current reference to designated systems may not cover all critical FMIs (financial market infrastructure) that banks interact with. The Treasury were happy to follow up on this point.

Next steps and future BLP meetings – agenda item 3

18. The Treasury outlined next steps regarding the updating of the Code, indicating that the Treasury intended to publish the updated Code before exit day in a no-deal scenario.
19. The Treasury indicated that they would be happy to receive written comments from Panel members.

Any other business – agenda item 4

20. Panel members asked whether the Treasury currently had any plans regarding the implementation of BRRD2, and suggested that the arrangements in the BRRD for cooperation with third countries on resolution could be useful for future UK-EEA cooperation on resolution. The Treasury said that this was something that could be considered but noted that the UK would remain committed to international standards.