CENTRAL BANK OF IRELAND

Circulated to Commission Members
on 16 March 2017

Paper No. 85 of 2017

FOR INFORMATION

BREXIT TASK FORCE: MARCH 2017 UPDATE

Brexit Task Force

Central Bank of Ireland - CONFIDENTIAL

BREXIT TASK FORCE: MARCH 2017 UPDATE

Introduction

The quarterly report of the Brexit Task Force (BTF), provides updates on political, economic and financial market developments since the referendum, risks arising for firms supervised by the Bank and issues arising for the Bank itself in particular pertaining to authorisations. Within this report, the BTF aims to provide updated information on these topics alongside more in-depth analysis of issues and policy questions arising from Brexit. The report is attached in the Appendix.

The Commission is requested to note the overview and update of the Brexit Task Force: March 2017 Report.

APPENDIX

BREXIT TASK FORCE: MARCH 2017 UPDATE

Contents

Executive Summary 3
1. **Introduction** 6
2. **Political and Market Developments** 7
   2.1. Political developments 7
   2.2. UK economic and property market developments 9
   2.3. Financial market developments 14
3. **Impact on Irish Economy** 19
   3.1. Macroeconomic impact 19
   3.2. Property sector 21
4. **Sectoral Developments** 23
   4.1. Banking 23
   4.2. Insurance 25
   4.3. AMS and SMS Directorates 26
   4.4. Market infrastructure 27
5. **Authorisation Activity** 29
   5.1. Overview 29
   5.2. New authorisations versus extension of activities 30
   5.3. Banking 31
   5.4. Insurance 31
   5.5. AMS and SMS 32
   5.6. Consumer protection 33
6. **Special Topic 1 Potential impact of a hard Brexit on Irish financial services channels** 34
   6.1. Markets 35
   6.2. Financial market infrastructures 36
   6.3. Banking 37
   6.4. Insurance 39
   6.5. Cross cutting issues 40
7. **Special Topic 2 Impact of Brexit on the widespread use of English law contracts** 42
   7.1. Background 42
   7.2. Key issues 42
   7.3. Existing contracts 44
   7.4. Future contracts 45
   7.5. Other Issues 45
   7.6. Conclusion 46

[redacted]

Appendix 1 53
2017 Q1 Official Senior Management Brexit Engagements 53

Appendix 2: EU Institutional Arrangements **54**
Appendix 3 : Banking **55**
Glossary **56**

Executive Summary

- Since the December 2016 Task Force Report, the UK government has set out key aspects of its position for the Brexit negotiations that will take place after Article 50 is triggered. The UK will not seek continued single market membership nor will it remain part of the Customs Union. It will seek a form of transitional arrangement. The UK has also noted that if the EU was to pursue a punitive deal, the UK would have recourse to adjusting its economic model, including potentially with regard to corporate tax rates.
- If Article 50 is triggered in March, the Barnier Taskforce has suggested that agreement would need to be completed by September/October 2018 in order to allow ratification by the UK and European parliament before the two-year deadline elapses. The two-year timeframe can be extended if all Member States agree to this.
- The Irish government has made clear Ireland's main priorities in the negotiations, which are minimising the impact on trade and the economy, protecting the Northern Ireland peace process, maintaining the Common Travel Area, and influencing the future of the European Union. Ireland supports as close as possible an economic and trading relationship between the EU and UK, based on a level-playing field.
- In the UK, the Bank of England in February revised upwards its projections for growth over the period 2017-2019, following signs of stronger activity in Q4 2016. Growth is still expected to slow, however, as the GBP depreciation results in higher import prices and decreased household purchasing power. The outlook for the medium term remains uncertain and weaker than before the referendum.
- There are signs of regional variation in the UK property market, with the outlook for both commercial and residential markets having deteriorated in London compared to other regions. Survey evidence shows that market participants expect significant relocation of firms from central London, Northern Ireland and Scotland as a result of Brexit.
- In financial markets, sterling has remained relatively range-bound since the last Task Force report. At the cut-off date for this report, on 3 March 2017, sterling was 12.5 per cent weaker than it had been the day before the Brexit referendum. Since the December report, UK bank equities have performed strongly, in line with global trends. The weak currency and more positive economic data have supported UK banks' performance.
- The outlook for the Irish economy remains subject to uncertainty that pertains to a number of external risks including Brexit. The forecasts however are for relatively favourable growth in the coming years, supported by continuing recovery in domestic demand. While output of the traditional manufacturing sectors declined during 2016, production growth was sluggish early in the year, i.e. even before the referendum.
- Trade data for last year give some insight into how some specific exports to the UK performed. For a number of food and beverage sectors, export volumes increased but values declined, which may be some indication of exchange rate fluctuations having an effect on export values.
- It remains too early to identify any Brexit-related effects on foreign direct investment flows. ESRI analytical work has produced some estimates on potential positive effects on employment and output from additional net inward investment flows from the UK. Irish commercial property agents such as CBRE have noted an escalation in the flow of office accommodation enquiries from British companies.

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- Banking Supervision is working cross-departmentally with other regulatory and supervisory Divisions to ensure a consistent approach and that a consistent message is being delivered to banks with regard to this approach. A list of official senior management Brexit-related speaking engagements for 2017 Q1 is provided in Appendix 1.
- [redacted].
- There is a wide variety in potential insurance applications in terms of size and types of business model but nothing that is beyond the current range of undertakings already authorised by the Bank. Most are in relation to non-life insurance; some of these are to write business in Ireland but many are for a European hub. A cross-directorate discussion group has been established to consider all issues in relation to current and potential insurance authorisations.
- With regard to firms supervised by the Asset Management Supervision and Securities and Markets Supervision directorates [redacted] queries continue to be received. Feedback received is that the Boards of Directors are being presented with options in H1 2017. Several firms already with a presence in Ireland have advised that they plan to increase the level of activities they undertake here.
- A more diverse cross-section of entity types and business models will increase the complexity of entities supervised across these sectors. As discussed in the previous report, task forces have been established in relation to [redacted] and central securities depositories (CSD) and reports of these task forces will be discussed by the FSC on 13 March 2017.

- [redacted]

- An overview of the Brexit-related enquiries received across the organisation as a whole is provided in chapter 5. This information is updated on a monthly basis by the Supervisory Risk Policy team within the Supervisory Risk Division. As at 24 February 2017, [redacted] enquiries had been received since the referendum. There are [redacted] firm intentions to apply for authorisation.

- This Report contains two special features. The first is a **High level overview of the potential impact of a hard Brexit on Irish financial services channels.** It examines how a hard Brexit, which is assumed to mean at least that the UK will no longer be a member of the EEA, will lose all passporting rights associated with current EU membership and will be assessed as a 'third country' jurisdiction, may alter the landscape of the Irish financial services sector. The item separately assesses markets firms, financial market infrastructures, banking and insurance and also highlights some cross-cutting issues.

- The second special feature considers the potential **Impact of Brexit on the widespread use of English law contracts for EU financial transactions.** Given that most financial transactions in the EU take place in the UK, irrespective of where the counterparties are based, the development and interpretation of these transactions has developed over time within the English legal system. It remains to be seen how existing and future cross-border transactions will be affected when the UK leaves the EU and whether there are potential financial stability considerations for the EU relating to this issue. It is highlighted how Brexit raises uncertainty regarding the application of key rules on jurisdiction, choice of law and enforcement of judgements which might affect assessment of litigation risk and accurate pricing of commercial transactions.

1. Introduction[1]

Following the Brexit referendum, the Central Bank's Financial Stability Committee (FSC) requested that a Task Force on Brexit implications be established on a permanent basis to monitor and assess developments in this area. The Brexit Task Force (BTF) provides updated information regarding political, economic and financial market developments, risks arising for firms supervised by the Bank and issues arising for the Bank itself, in particular with respect to authorisations. Furthermore, each report selects a number of issues or policy questions related to Brexit and provides an in-depth examination of these areas.

This third BTF Report follows the third meeting of the group on 14 February 2017. The layout of the Report is as follows. Section two provides an update on political developments, the performance of the UK economy and property market and financial market movements over the past three months. Section three discusses the changes to the outlook for the Irish economy and property market in the context of Brexit. Section four provides an overview of latest developments in relation to firms supervised by the Credit Institutions, Insurance, Asset Management and Securities and Markets Directorates, respectively. In Section five, information relating to queries received by the Central Bank in relation to potential applications for authorisations is presented. Section six provides high level overview of the potential impact of a hard Brexit on Irish financial services channels. Finally, section seven assesses the impact of Brexit on the widespread use of English law contracts for EU financial transactions

[1] The following Divisions are represented on the Brexit Task Force: BSSD, CPD, FMD, FRG, FSD, IEA, IFFS, SMSD, INSA, MPD, ORD, Risk, SRD, PSSD, RES. The report has also benefited from discussions with the Department of Finance. The Chair (Mark Cassidy) and Secretariat (Ellen Ryan) are provided by FSD.

2. Political and Market Developments

2.1. Political developments[2]

2.1.1. UK level developments

On 17 January 2017 in a significant Brexit speech at Lancaster House, PM Theresa May set out a number of key aspects of the UK's negotiating position. This was further expanded upon in the Government White paper published on 2 February. Key points include the following:

- the UK will seek an ambitious Free Trade Agreement (FTA) with the EU;
- the UK will not seek continued single market membership as red lines for the UK are control of immigration and that the jurisdiction of the European Court of Justice in Britain will end;
- the UK will not remain part of the Customs Union, as it wishes to pursue FTAs with other countries - however it is seeking a new, as yet undefined, 'customs agreement' and;
- the UK will seek a form of transitional arrangement or 'phased process of implementation'.

Both the PM's speech and the White paper outline the view that an FTA may take in elements of current Single Market arrangements in certain areas, for example the export of cars and lorries or the freedom to provide financial services across national borders.

Additionally, in line with recent comments made by Chancellor Hammond, the speech set out that if the EU was to pursue a punitive deal, the UK would have recourse to adjusting its economic model. The White paper re-iterates this point, outlining that 'no deal for the UK is better than a bad deal' and that in such an eventuality the UK Government will prepare legislation "to ensure our economic and other functions can continue."

In terms of timing, following a Supreme Court judgement on 24 January 2017 that the UK Parliament should vote prior to the triggering of Article 50, the UK Government has presented the European Union (Notification of Withdrawal) Bill to the House of Commons. The Third Reading took place on 7 February. Following this the UK Government presented the European Union (Notification of Withdrawal) Bill to the House of Commons and House of Lords. During the Committee stage (27 February-1 March) the House of Lords voted to amend the Bill to require the Government to guarantee the rights of EU citizens living in the UK. The amended Bill will now return to the House of Commons on (13-14 March), when MPs will debate whether to support the proposed amendment. The UK Government are expected to invoke Article 50 shortly thereafter. Separately the UK Government has agreed that MPs will vote on the final withdrawal agreement prior to ratification by the European parliament.

2.1.2. EU position and negotiation process

The principles of no negotiations before notification and that access to the Single Market requires acceptance of all four freedoms have been reiterated on numerous occasions, most

[2] Our thanks to the Department of Finance for providing the background information on the latest political developments.

recently in the EU 27 statement after the 15 December European Council. The Annex to the EU 27 statement sets out the Article 50 negotiation arrangements, including on the political oversight of the process by the European Council.

Once Article 50 is triggered a two-year time limit commences, so that the UK will exit from the EU two years from the trigger date unless all Member States agree to extend the time period. To allow time for ratification by the UK and the European Parliament before the two-year deadline elapses, the Barnier Taskforce has suggested that the agreement would need to be completed by September/October 2018.

Once the UK gives formal notification of its intention to leave, it will then fall to the remaining 27 members of the European Council to agree on guidelines setting out the broad approach for the negotiations between the EU and the UK, and the mandate granting a negotiating framework to the Commission. In relation to the mechanics of the negotiations, the Annex of the EU 27 statement as agreed by Heads of State and Government (HoSG) at December European Council provides some clarity on the process relating to the adoption of the guidelines and negotiating directives. (See in Appendix 2 for a diagram of EU institutional arrangements for conducting the negotiations, as compiled by the Department of Finance).

[redacted]

[redacted]

[redacted]

2.1.3. Irish perspective, preparations and political developments

Irish position

The Government remains clear on Ireland's headline priorities, which are: minimising the impact on trade and the economy; protecting the Northern Ireland peace process; maintaining the Common Travel Area; and influencing the future of the European Union.

Ireland supports as close as possible an economic and trading relationship between the EU and the UK, based on a level playing field. It is in our interests that the UK should maintain the closest possible links to the EU. In the upcoming negotiations, Ireland will negotiate from a position of one of the 27 Member States, and will work to ensure that the negotiations are conducted in a positive and constructive way. An agreement needs to cater for the needs of all to the greatest extent possible, and we will be focused on protecting and advancing Ireland's interests at every turn.

With regard to Ireland's membership of the EU, we are clear that our interests are best served within the European Union, and remain committed to shaping and influencing the direction of the Union for times ahead.

Preparations

Preparations are currently intensifying at both political and official level, and include:

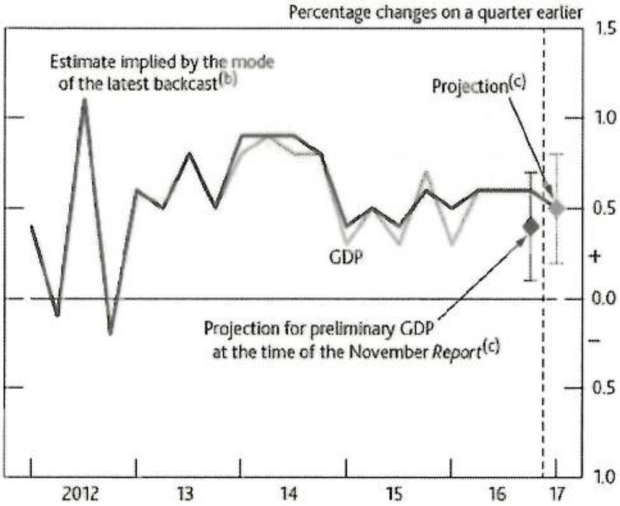
- Domestically, consultation is ongoing with industry and civic society. The all-Island Dialogue has thus far included, 14 sectoral events, two plenaries, and over 1,200 delegates representing industries and organisations from across the country.
- The new Cabinet Committee on Brexit, chaired by the Taoiseach, with Ministers supported by Secretaries General, which has met on six occasions. The interdepartmental Senior Officials Group, which prepares the Cabinet Committee, has also established six sectoral workgroups (October 2016) in order to deepen analysis at whole of Government level with a view of finalising advice to Government and to progress issues [redacted]
- An important part of the Irish Government's work is ensuring that Irish priorities are heard and understood across Europe. Therefore, engagement with EU partners and with the EU institutions is critical. A programme of intense engagement at political and official level is continuing to ensure that the EU's position for the forthcoming negotiations reflects our priorities. Thus far this has included, for example, eighty Brexit engagements by Minister Flanagan with his counterparts and other Ministers meeting their EU partners at monthly Council meetings.
- In Brussels there have been a number of high level meetings with the Commission and the Council. Following the Taoiseach's meeting with the Barnier team in October 2016, there have been a number of official-level engagements with the Commission Taskforce which has provided an opportunity for more detailed discussion on Irish specific issues and these engagements are continuing.

2.2. UK economic and property market developments

2.2.1. Macroeconomy

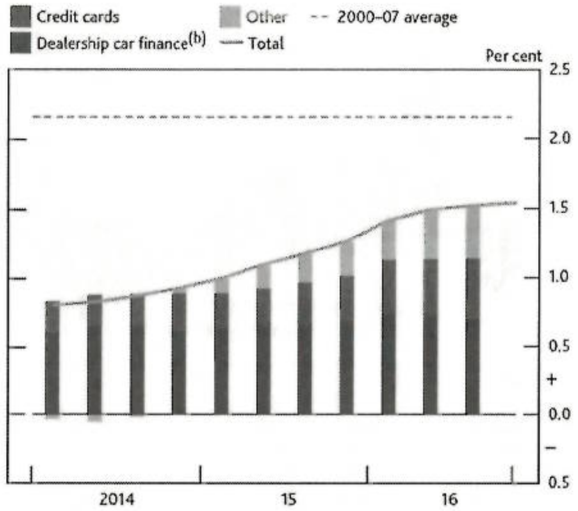
According to the Bank of England's February 2017 Inflation Report, UK output growth remained stable over 2016 with growth of 0.6% for the final quarter of the year and 0.5% projected for the first quarter of 2017 (see Chart 2.2.1). These figures are markedly stronger than those forecasted in the Bank of England's first post-referendum (August) inflation report and stronger again than suggested by output indicators following the referendum. However, much of this growth has been underpinned by consumption growth which is expected to slow as GBP depreciation results in higher import prices and decreased household purchasing power. It should also be noted that this consumption growth is taking place alongside elevated household indebtedness and, although remaining small relative to total consumption, rising consumer credit growth (see Chart 2.2.2). Furthermore, while the MPC currently expects this adjustment to occur at a gradual place, recent statements by incoming Deputy Governor Charlotte Hogg indicate a view that such reversals could take place more suddenly as consumers respond to new information and adverse economic developments.[3]

Chart 2.2.1: UK Output growth and BoE near-term projection[(a)]



(a) Chained-volume measures. GDP is at market prices.
(b) The latest backcast, shown to the left of the vertical line, is a judgement about the path for GDP in the mature estimate of the data. The observation for 2017 Q1, to the right of the vertical line, is consistent with the MPC's central projection.
(c) The magenta diamond shows Bank staff's central projection for the preliminary estimate of GDP growth in 2016 Q4 at the time of the November Report. The green diamond shows the current staff projection for the preliminary estimate of GDP growth in 2017 Q1. The bands on either side of the diamonds show uncertainty around those projections based on one root mean squared error of past Bank staff forecasts for quarterly GDP growth made since 2004.
Sources: ONS and Bank of England calculations.

Chart 2.2.2: Net four-quarter change in consumer credit as a share of consumption[(a)]



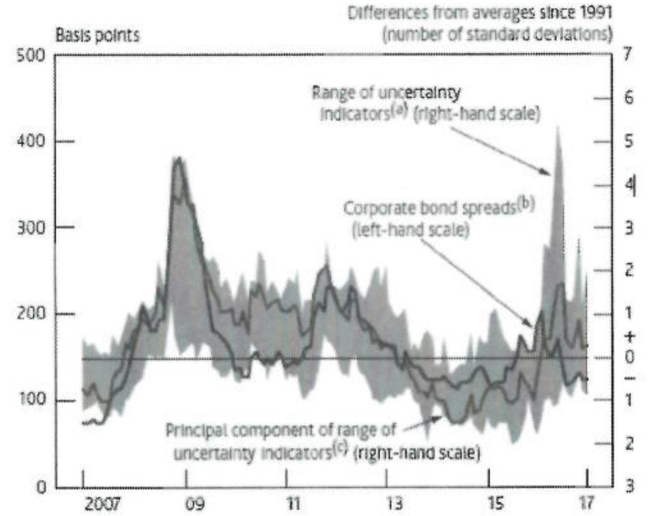
(a) Four-quarter net flow of consumer credit divided by four-quarter nominal household consumption. Data are non seasonally adjusted sterling net lending by UK MFIs and other lenders to UK individuals excluding student loans.
(b) Dealership car finance lending is estimated using the change in outstanding stock and it may therefore reflect breaks in the series. Data are not yet available for 2016 Q4.
Sources: Bank of England, Finance & Leasing Association, ONS and Bank of England calculations.

In contrast to the survey indicators available at the time of publishing the November report, the February report finds that official estimates of business investment rose for 2016 Q3. This could be due to firms taking time to adjust investment plans and to relatively stable credit conditions. Despite this, investment is projected to fall over the coming quarters and surveys, such as the Deloitte CFO Survey, find that business uncertainty remains elevated.

Despite the GBP depreciation, net trade made a negative contribution to GDP over 2016 Q3. However, on a positive note, the GBP depreciation is expected to support net trade going forward by both reducing domestic demand for imports and supporting UK exports. Similarly, the UK current account widened for 2016 Q3 but is projected to narrow as the GBP depreciation supports investment income[4] and net trade.

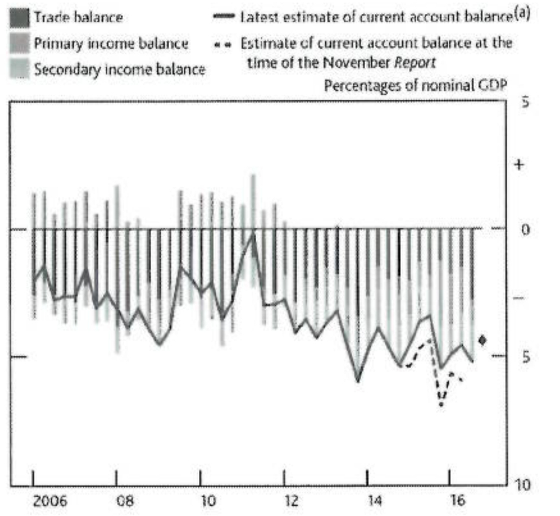
[3] See "Bank of England's Charlotte Hogg warns on Brexit 'challenge'" Financial Times 28 February 2017.
[4] This is due to UK residents, on aggregate, holding more foreign currency assets than they foreign currency liabilities.

Chart 2.2.3: Uncertainty and credit conditions



(a) A higher number indicates greater uncertainty. Range includes: the average standard deviation of monthly Consensus Economics forecasts for GDP growth in the current and next year ahead, seasonally adjusted by Bank staff; the number of media reports citing uncertainty in four national broadsheet newspapers; survey responses of households to questions relating to their personal financial situation and unemployment expectations; and the three-month implied volatilities for the FTSE 100 and sterling ERI — realised volatilities have been used prior to April 1992 and September 2001 respectively. Media and implied volatilities data for January are based on daily data up to 25 January. Household survey series based on data to December 2016.
(b) Sterling non-financial investment-grade corporate bond spreads. End-month observation; series based on data up to 25 January.
(c) The first principal component extracted from the set of indicators listed in footnote (a).
Sources: Bloomberg, Consensus Economics, Dow Jones Factiva, GfK (research on behalf of the European Commission), Thomson Reuters Datastream and Bank of England calculations.

Chart 2.2.4: UK current account



(a) The diamond shows Bank staff's projection for the current account balance in 2016 Q4.

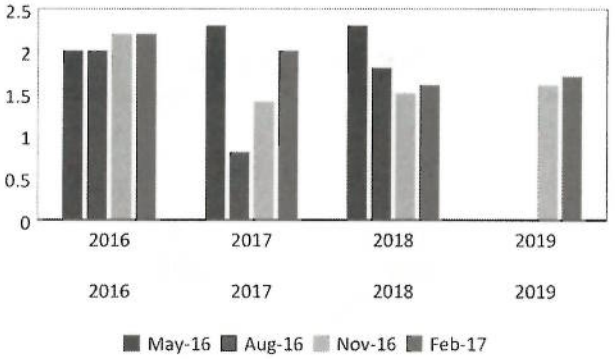
Source: Bank of England

These developments, combined with signs of increasing momentum in the global economy and increased government spending announced in the Autumn Statement, resulted in upward revisions to 2017 growth forecasts (see Chart 2.2.5). However, revisions to forecasts for 2018 and 2019 were limited and forecasted growth for the medium term remains weaker than initially set out in the Bank of England's first post-referendum report. Revisions to inflation forecasts were also limited, with inflation expected to increase to the two per cent target by February and increase further thereafter. Higher inflation is expected to be driven largely by sterling depreciation over the next three years, and the MPC re-iterated in February that it remains appropriate to seek to return inflation to the target over a somewhat longer period than usual. Finally, the MPC, at their February meeting, voted to hold the Bank rate at 0.25%, and to maintain the level of government bond purchases at £435bn and corporate bond purchases at £10bn.

2.2.2. Property market

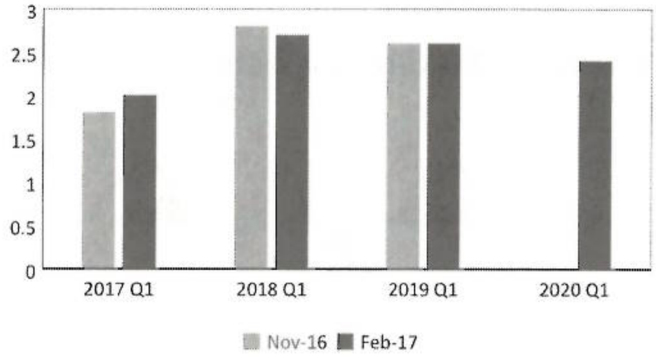
UK commercial real estate (CRE) values posted further monthly increases in the closing months of 2016 and into 2017. According to MSCI/IPD, commercial property capital and rental values grew 0.3 per cent and 0.2 per cent respectively in the month of January 2017, compared to increases of 0.8 per cent and 0.2 per cent, respectively, in December 2016. On an annual basis, however, CRE values continued to weaken. Year-on-year capital values were 2.4 per cent lower in January, following a 2.5 per cent decline in December. The equivalent January 2016 figure was an increase of 7.6 per cent (Chart 2.2.7). The largest fall came in the retail market where capital value fell by 4.4 per cent over the past year.

Chart 2.2.5: UK GDP forecasts by publication date



Source: Bank of England
Calendar-year growth in real GDP consistent with the modal projection for four-quarter growth in real GDP. The MPC's projections are based on its backcast for GDP.

Chart 2.2.6: UK inflation forecasts by publication date



Source: Bank of England
Four-quarter inflation rate. The February projections have been conditioned on the assumption that the stock of purchased gilts remains at £435 billion throughout the forecast period; the stock of purchased corporate bonds reaches £10 billion and remains there throughout the forecast period; and on the Term Funding Scheme (TFS); all three of which are financed by the issuance of central bank reserves. The November projections were conditioned on the same asset purchase and TFS assumptions.

Recent months have also witnessed a moderation in the pace of annual rental inflation, to 2 per cent in January 2017, from 4.3 per cent at the beginning of last year (Chart 2.2.8). In terms of sectoral performance, year-on-year rental growth in the office sector has eased most notably in the past 12 months, from 8.1 per cent in January 2016 to 2.2 per cent in the opening month of this year. Meanwhile, industrial rents posted annual growth of 3.9 per cent, while the retail market was up 0.8 per cent.

Despite the easing of commercial property value growth, recent survey evidence hints at a more positive outlook. Results from the RICS 2016 Q4 "UK Commercial Property Market Survey"[5], show a pick-up in investment demand following the volatility reported in the aftermath of the EU referendum. Respondents involved in the rental market, reported a modest increase in occupier demand from tenants for the second consecutive quarter, mainly driven by the industrial area of the market. Regionally, London is highlighted as the area where occupier demand fell most during Q4, with this drop likely to translate to lower rents in the office and retail sectors over the year ahead.

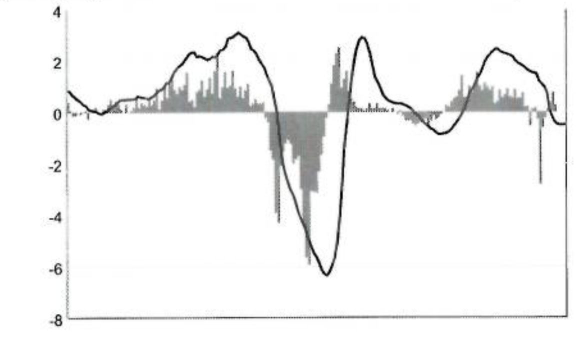
As in previous editions, the 2016Q4 Survey included a question on whether respondents had seen any evidence of firms looking to relocate away from the UK in response to the EU referendum outcome. Nationally, just under 20 per cent of respondents reported seeing evidence of firms looking to relocate outside the UK in response to Britain's decision to leave the EU, up from 14 per cent in Q3. These figures were higher for respondents from central London, Northern Ireland (NI) and Scotland where approx. 30 per cent of respondents in each of these regions claimed to have seen firms looking to relocate. As to whether RICs members expect to see firms move over the next two years, on a UK-wide basis, a significant 39 per cent said they believed this would occur, (up from a third in Q3). Again, the belief that firms would move at least some of their business activity away from the UK was highest in central London, NI and Scotland, at over 50 per cent in each region.

Finally, across London 62 per cent of survey respondents are of the opinion that the market is in the early to middle stages of a downturn (up from 44 per cent in Q3). The view across the

[5]See http://www.rics.org/Global/RICS%20UK%20Commercial%20Property%20Market%20Survey%20-%20Q4%202016.pdf

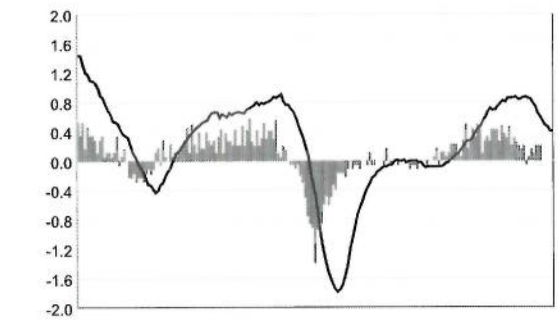
remainder of the UK is more upbeat, where a majority (62 per cent) feel the market is in an upturn phase with 20 per cent of the opinion that conditions in their local market are consistent with a downturn.

Chart 2.2.7: UK CRE capital growth



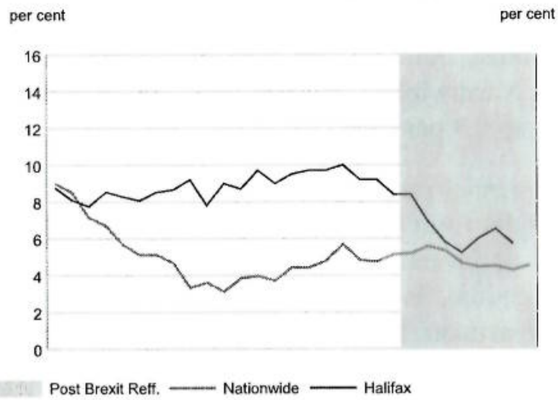
Source: MSCI/IPD and Central Bank of Ireland calculations

Chart 2.2.8: UK CRE rental growth



Source: MSCI/IPD and central Bank of Ireland calculations

Chart 2.2.9: UK house price growth



Source: Nationwide and Halifax

Broadly speaking there has been a slowdown in the pace of UK house price growth since the EU referendum (Chart 2.2.9). Residential house prices were 5.7 per cent higher year-on-year in January 2017 according to Halifax, down from 8.4 per cent in July and from the 9.7 per cent a year ago. Meanwhile, February 2017 data are available from Nationwide, showing an annual growth rate of 4.5 per cent, a drop from 5.2 per cent in the month following the referendum, and 4.8 per cent a year earlier. Looking ahead, according to the RICs UK Residential Market Survey[6], London is the only area where near term price expectations are negative over the 3-month horizon. On an annual basis London is the sole region where the outlook has turned marginally negative.

2.3. Financial market developments

Overall, financial markets have reacted in a relatively sanguine manner to the Brexit process; however, the triggering of Article 50 may see market attention return to the issue. It is also difficult to isolate Brexit effects in overall financial market developments. The

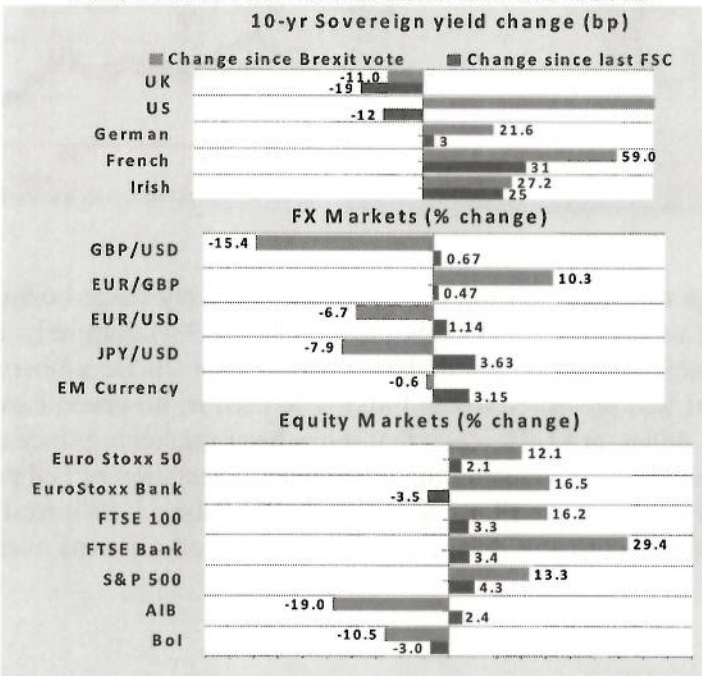
[6] See http://www.rics.org/Global/1._WEB_%20January_2017_RICS_UK_Residential_Market_Survey_rte.pdf

primary themes which have influenced markets over the review period since the last Task Force report include:

- A number of hawkish comments by Fed officials with markets now pricing in a steeper hiking cycle for the US;
- a greater degree of uncertainty about the likely US fiscal policy stance going forward;
- political uncertainty is weighing upon the euro area sovereign market. Italy and France, in particular, have seen significant spread widening to Germany over the period, while a flight-to-quality bid has seen short-end core yields fall to new lows;
- talks are ongoing between the Greek government and international bodies regarding the release of a further tranche of financial aid [redacted]
- there were a number of more positive than expected economic data releases in Europe over the period, which has led some market participants to speculate over potential amendments to the ECB's Public Sector Purchase Programme (PSPP) and;
- markets have reacted in a relatively sanguine manner to the Brexit process, however, the triggering of Article 50 may see market attention return to the issue.

Chart 2.3.1 below illustrates the main market moves since the Brexit vote and the last FSC meeting.

Chart 2.3.1: Post-Brexit main market moves



In relation to **bond markets**, US sovereign yields traded within a relatively tight range over the period since the last Task Force report. As investors reconsidered the ability of the Trump administration to implement infrastructural spending, longer-dated yields initially traded lower. However, some of this move was reversed more recently as hawkish Fed official comments have led to markets pricing in close to a 60% chance of a rate hike at the May FOMC meeting, with a 38% probability priced in for the March meeting. In Japan, in spite of the renewed steepening bias globally, the Bank of Japan (BoJ) appears to have effectively placed an upper limit on its sovereign 10-year yield, the stated 'yield curve management' target, with the 10-year continually trading close to 10bps over the period (Chart 2.3.2). In the UK, Gilts reversed some of the significant steepening which occurred throughout Q4 2016, with the 10-year yield falling by c. 30bps over the period to currently trade at 1.09%.

In Europe, **political risk** has driven sovereign markets, with the German 2-year bond hitting a historic low of -91bps on 23 February, with other core bonds tracking Germany lower on a flight-to-quality bid. Ahead of the presidential elections, France has decoupled from the core with its 10-year yield trading 30bps higher over the period at 1.01%, while the spread against Germany increased by 20bps over the period (Chart 2.3.3). France began to trade in line with Ireland, converging with the Irish 10-year bond currently trading at 1.04%, as the Irish/German 10-year spread increased by c. 20bps over the review period.

Chart 2.3.2: G4 10-year sovereign yields

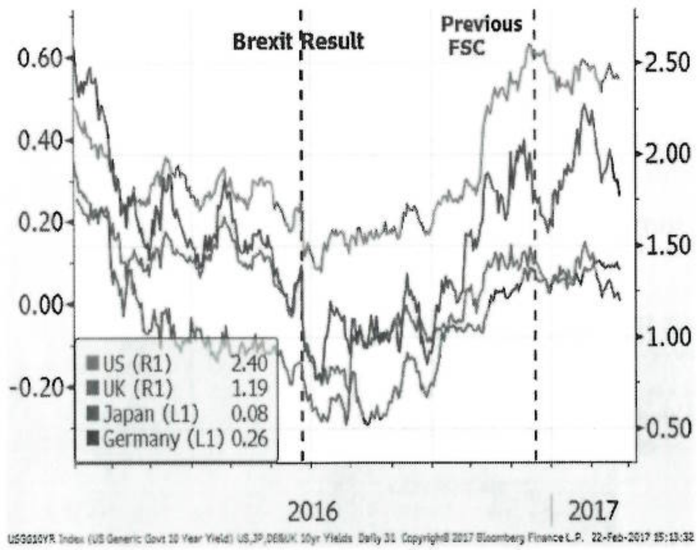
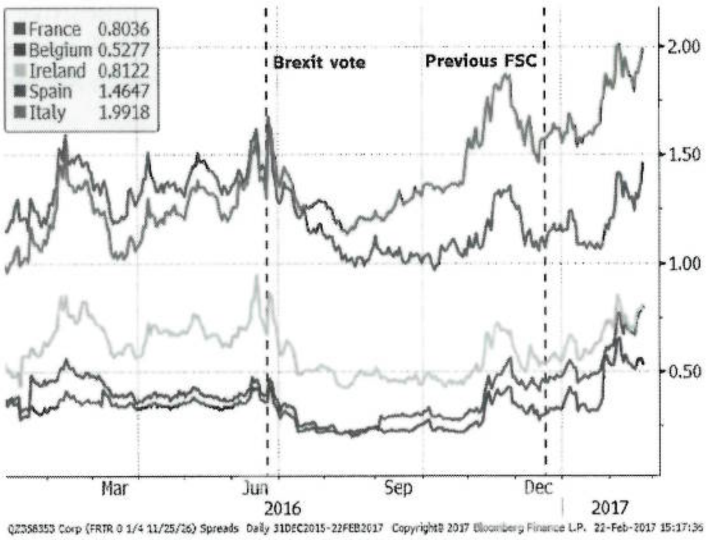


Chart 2.3.3: Selected 10-year spreads to Germany



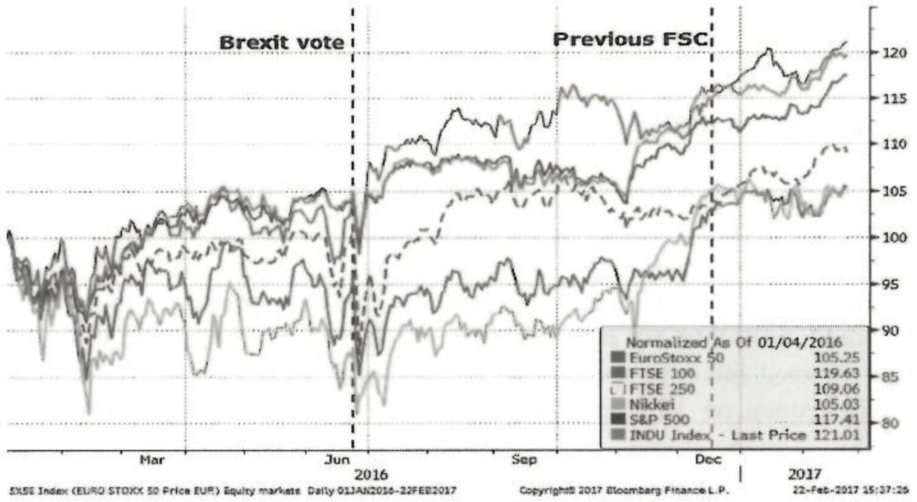
In **foreign exchange markets**, sterling has remained relatively range-bound over the period, but still trades close to 4% above its October lows (Chart 2.3.4). Similarly, both the euro and dollar, on a trade weighted basis, are trading close to their 20 December levels (when the BTF's second report was presented to the FSC). The euro is, however, currently trading 1% stronger against the dollar, at $1.05, albeit that it has been weakening since early February on the back of increased political concerns and the greater expectation of Fed rate hikes. On this, the 3-month risk reversals[7] on the EURUSD is currently trading at its lowest level since 2012, amid the aforementioned euro area political risks and renewed concerns over Greece.

[7] Risk reversals are quantified by comparing the price of call options, which give the option to buy a currency versus put option, which give the right to sell. Therefore, a positive number indicates markets are expecting a currency to appreciate, and vice versa.

Chart 2.3.4: Selection trade weighted currency indices

The majority of global **equity indices** are up over the period (see Chart 2.3.5), with the US equity indices, the Dow Jones and S&P 500, hitting historic highs over the period. UK equities also remain buoyant, despite concerns over the Brexit process. Both the FTSE 100 and more domestically oriented FTSE 250 gained over 3.5% since 20 December on the back of the weak sterling and more positive than expected domestic economic data.

Chart 2.3.5: Selected equity indices normalised performance

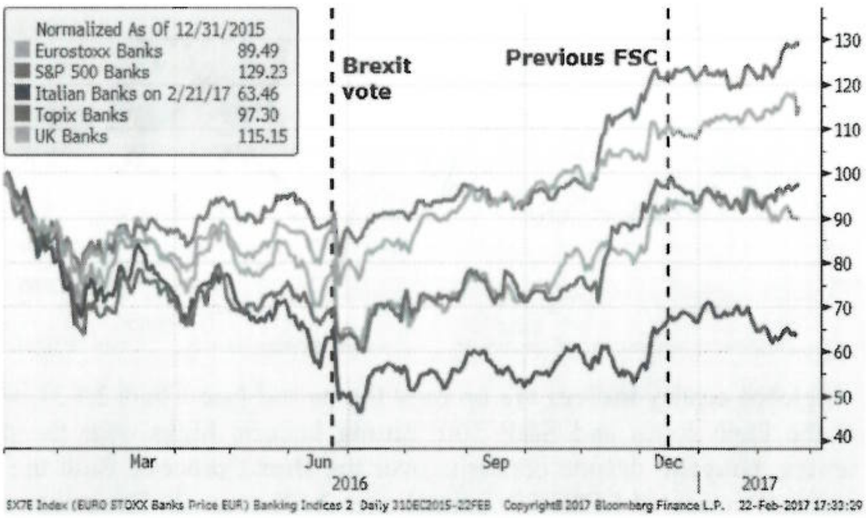


Notably, despite political and policy uncertainty, equity volatility measures globally remain rooted at, or close to, historic lows over the review period. The only equity markets that appear to be pricing in an expectation of increased volatility are euro-based indices, where the EuroStoxx 50 volatility forward curve indicates markets are pricing in a potential increase in volatility around the time of the French elections in April.

Over the period, the majority of global banking indices performed strongly. In the US, the S&P Banking index returned close to 6.5%, with American banks benefiting from an expectation of reduced regulation going forward (Chart 2.3.6). However, European banks, as estimated by the EuroStoxx Banking Index, decoupled from their global counterparts over the period, falling by c. 5% over the period. This comes amid poor earnings reports ([redacted]), ongoing difficulties with the Italian banking sector and concerns over the implications of any amendments made by the Trump administration which may favour the

US banking sector. The Italian banking sector fell by c. 5% over the period, and remains close to 40% below its valuation at the beginning of 2016. The Italian parliament was required to approve a €20bn recapitalisation fund for struggling banks over the period.

Chart 2.3.6: Performance of banking indices



UK banks performed strongly over the period, amid the weak currency and more positive than expected economic data releases within the region. Furthermore, risks associated with loss of passporting rights for UK do not appear to have had major impact on risk sentiment in this market and do not seem to be driving developments regarding their continental counterparts.

2.3.1. Property Funds and REITs

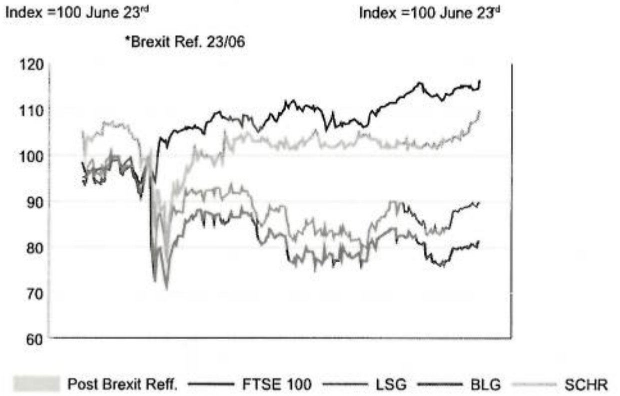
Shortly after the EU referendum result, trading in seven CRE funds in the UK's £25bn commercial property fund sector was suspended, preventing investors from either withdrawing or depositing money from the affected funds.[8] Other funds lowered unit prices through the addition of a "fair value adjustment", meaning investors looking to cash in investments would be doing so at a considerable discount. Recent months have seen a number of the affected funds re-open, however, and with the recent announcement that the Aviva fund will reopen on 15 December all seven funds which were closed will have re-opened.[9]

Many UK-listed property-related firms saw their share prices drop substantially in the immediate aftermath of the UK referendum result. In the closing days of June, REITs such as Land Securities, British Land and Schroders, declined by 23.5, 28.6 and 20.7 per cent respectively. While there has been some recovery in the months since, (Schroders is currently 10 per cent higher than its eve-of-vote level), Land Securities and British Land are still 10 per cent 18 per cent off their pre-referendum values. Meanwhile the FTSE 100, which lost about 5 per cent of its value in the days following the Brexit decision, was almost 17 per cent higher at the beginning of March 2017 (Chart 2.3.7).

[8] Property funds managed by firms such as Aviva, Standard Life, Henderson Global Investors, Canada Life, Columbia Threadneedle/Ameriprise and M&G were amongst the affected.
[9] See "All UK commercial property funds closed by Brexit vote reopen".

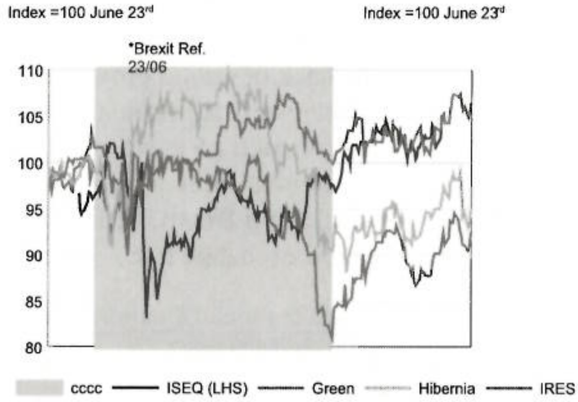
Irish listed REITs also experienced an initial share price drop following the announcement of the referendum result. While there was a recovery in subsequent weeks, commercial property focussed Green and Hibernia REITs' share prices have once again declined a little of late (Chart 2.3.8). According to the latest data, Green REITs share price is down 7.5 per cent on its June 23rd level, while Hibernia's is down 5 per cent. In contrast the value of the more residential property focussed I-RES has, in general, been increasing in recent weeks, and is now about 7 per cent above its pre-referendum level.

Chart 2.3.7: UK REIT share prices vs. FTSE 100



Source: Datastream and central Bank of Ireland calculations
Notes: LSG = Land Securities Group, BLG = British Land Group and SCHR = Schroder Real Estate. Last observation March 1st

Chart 2.3.8: Irish REIT share prices vs. ISEQ



Source: Datastream and central Bank of Ireland calculations
Notes: Last observation March 1st

3. Impact on Irish Economy

3.1. Macroeconomic impact

3.1.1. Central Bank forecasts

The Bank's most recent set of forecasts were published in January (Quarterly Bulletin No. 1, 2017) with projections for 2018 included for the first time (see Table 3.1.1). The macroeconomic outlook remains positive (average annual growth of just over 3 per cent in 2017/18) on the back of strong growth in domestic demand and employment. The projections incorporate a downward adjustment to growth in 2017 and 2018, with 0.6 and 0.2 per cent shaved off GDP in each of these years, respectively. That said, the tone of the latest set of forecasts was cautious with a number of references to uncertainty mainly in relation to external risks including Brexit. Inflation remains very subdued in part due to the weakening in the sterling/euro exchange rate – quickly passed through into consumer prices.[10]

Table 3.1.1: Growth Outlook - Quarterly Bulletin No.1 2017[11]

Growth Rates, %	2015	2016e	2017f	2018f
Consumption	4.5	3.4	2.5	2.0
Government	1.2	5.5	2.0	2.0
Investment	32.7	5.1	7.4	7.0
Underlying Domestic Demand	5.4	3.9	3.3	2.9
Exports	34.4	4.8	4.1	3.9
Imports	21.7	4.8	4.9	4.7
GDP	26.3	4.5	3.3	3.0
GNP	18.7	7.6	2.8	2.5
BoP Current Account (% of GDP)	10.2	12.4	12.8	12.9
Unemployment rate (%)	9.5	7.9	6.9	6.1
Labour force	0.5	1.2	1.0	0.8
Employment	2.5	2.9	2.2	1.6
Inflation HICP rate (%)	0.0	-0.2	0.8	1.1

Since the Bulletin, the main data have come from the *Quarterly National Household Survey (QNHS)* published in February. This showed surprisingly strong employment growth of 3.3 per cent (+65,100) in the fourth quarter of 2016 with all 14 sectors posting increases. This brought the annual rate of employment growth up to 2.9 per cent (the highest since 2007). These data show little indication of any Brexit related effects – the pace of employment actually accelerated in the second half of the year.

Domestic demand will again be the main driver of growth in 2017 and 2018. Underlying domestic demand is projected to grow by close to 3 per cent per annum on average.[12,13] Consumer spending, despite Brexit related uncertainty, is likely to be supported by continued growth in employment and incomes. Investment is also likely to grow strongly on the back of pressing infrastructural needs in certain areas, notably housing. Net exports are expected to

[10] For more details see Box C: Exchange Rate Pass-Through to Consumer Prices, Quarterly Bulletin No.1, 2017.
[11] Labour market data for 2016 reflect the latest QNHS release (February 2017).
[12] This measure excludes volatile components of investment spending from domestic demand and appears to be more closely correlated with movements in employment. See Box B, Quarterly Bulletin No.1, 2016.
[13] For the forthcoming Quarterly Bulletin and following the report of the Economic Statistics Review Group (ESRG), there is likely to be an increasing emphasis placed on adjusted Gross National Income.

also support the growth outlook, albeit to a lesser extent than in previous years.[14] Overall, the Bank expects growth to remain strong but to moderate over the forecast period towards an annual rate of close to 3 per cent.

Higher frequency data since the Brexit referendum continue to be mixed. On the consumer side, the ESRI/KBC Bank Consumer Sentiment Index for January posted the highest reading since the referendum. While seasonal factors may have played a role in this optimism, the lack of economic fallout from either Brexit or the US election to date seems to have reassured consumers. Retail sales data grew robustly in November with more moderate growth in December. VAT returns for 2016 were a disappointing 3.4 per cent below target. However, it should be noted receipts were up 4 per cent year-on-year.

On the output side, headline PMI indicators suggest that growth accelerated in December and continued through January. However, these indicators should be treated with caution as the degree to which they are correlated with wider economic activity is questionable. Manufacturing output increased by 1.2 per cent in 2016 according to the monthly industrial series although this series is volatile. Within this, output in the traditional sector was down 0.9 per cent. It is difficult to say whether Brexit has had a large effect on this mainly indigenous sector as production growth was sluggish early in the year as well as in the latter part of 2016. However, as the consequences of Brexit become clearer, this sector is likely to be particularly susceptible to adverse movements in the exchange rate and any fall in demand in the UK.

Monthly merchandise trade data showed moderate growth for 2016. Exports increased by 4 per cent while imports declined by 0.7 per cent.[15] Exports to the UK decreased by 3.8 per cent mainly due to reductions in exports of Machinery and Transport Equipment and Food and Live Animals. The fall in the former is related to aircraft trade, in all likelihood due to a small number of leasing firms. However, the fall in exports of Food and Live Animals may be the first signs of a more difficult post-Brexit trading environment.[16] An analysis of disaggregated trade data for 2016 using Eurostat data gives a greater insight into how some specific exports to the UK performed.[17] For SITC code 01, Meat and meat preparations, export volumes increased by 2.1 per cent while values decreased by 3.5 per cent. This may be an indication of exchange rate fluctuations having an effect on export values by reducing euro receipts due to the weakness of sterling. For Vegetables and Fruit (SITC code 05), this effect is more pronounced, with export volumes up 17.2 per cent while values fell by 2.8 per cent. Beverages and tobacco (SITC code 1) was also affected with volumes increasing by 2.5 per cent with values down 7.6 per cent.

3.1.2. FDI impact

Most of the modelling work on Brexit has focused on the negative impact on Ireland via shocks to external demand. However, there is also a possibility of some upside (positive spillover) risk arising from stronger FDI flows into Ireland via:

- a relocation of UK based FDI to Ireland and;
- new FDI flows locating to Ireland (instead of the UK).

---

[14] The forecasts assume that exports grow more in line with world demand in 2017 and 2018.
[15] In 2015, exports increased by a 19.9 per cent with imports up 10.1 per cent.
[16] It is important to note the significant disconnect between these data and National Accounts aggregates due to the effect of contract manufacturing.
[17] This analysis uses the Eurostat ComExt database.

In terms of the modern sector and multinationals in general, it is too early to say whether there are any Brexit related effects. The same holds true for any inward or outward investment flows. There is little in the way of new data (post Brexit) on FDI. The latest official series relates to 2015 (and was published last November).

In terms of analytical work, Lawless and Morgenroth (2016) modelled the impact of Brexit on FDI flows using the COSMO model. They note that the UK has the 2nd largest stock of FDI in the world and the largest in the EU.[18] Hence there could be large effects arising from any relocation of this investment. Other research estimated that EU membership results in significant increases in FDI. Drawing on this, Lawless and Morgenroth assume that the UK loses 27% of its stock of FDI and that Ireland attracts a certain proportion of this – the stock of FDI in Ireland is increased by 7.3% or €22bn.[19] This is fed through the model as a significant boost to the traded sector over a 10 year period. Ultimately, the level of Irish GDP is raised by 3% relative to the baseline with employment 1.8% higher. These estimates are highly stylised. For example, it is assumed that Ireland can absorb all of this investment and there are no demand effects – i.e. demand shifts from the UK to Ireland.

3.2. Property sector

According to the latest available IPD data (2016Q4), total returns on Irish commercial real estate (CRE) remain higher than for many international peers. Similarly, although capital and rental value growth has waned in recent quarters, it is still quite robust at 7.4 per cent for both (Chart 3.2.1).

Irish commercial property agents such as CBRE have noted an escalation in the flow of office accommodation enquiries from British companies, in light of uncertainty surrounding the future passporting rights of UK-based financial services businesses.[20] While it is still difficult to assess the ultimate scale of Brexit-related relocations here, the increasing reportage of firms investigating the logistics of moving operations and staff to locations such as Dublin, makes it increasingly likely that the capital will benefit to some degree.

In this vein, CBRE have been investigating the extent to which the Dublin office market has the capacity cater for a potential wave of relocations from Britain[21]. According to their findings, in addition to the unoccupied 250,000 square metres of office-space which already exists, a further 360,000 square metres or 2 years the average annual take-up will be delivered in the next 2 years (Chart 3.2.2). Upon completion, this extra capacity will add approximately 10 per cent to the stock of office accommodation in the capital. On top of this, planning permission for a further 540,000 square metres, in 48 individual schemes has been granted and can be commenced if required, which should give comfort to potential occupiers that Dublin is more than capable of providing sufficient high quality office accommodation. What is more important therefor is that efforts are made to ensure the sufficient availability of associated key infrastructure such as housing.

In terms of an impact on the Irish housing market, one of the main issues surrounding Brexit concerns supply and the ability of the market here to cope with a surge in demand for accommodation should there be a widespread relocation of UK based firms/workers here. It

[18] The UK accounts for 5.8% of world FDI stocks and 18.7% of EU. Ireland accounts for 5.6% of EU FDI.

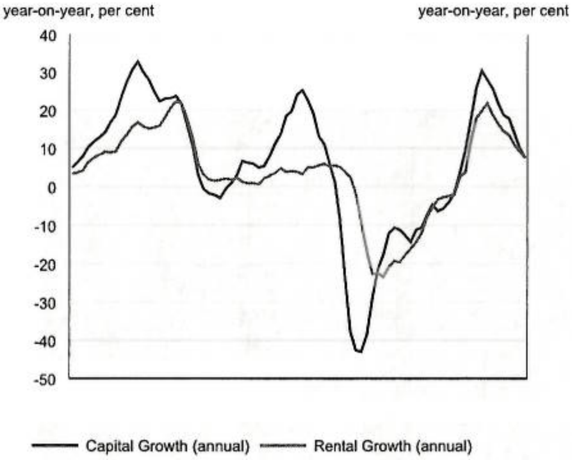
[19] This is based on an assumption that the UK is not part of an EEA or EFTA agreement.

[20] See https://researchgateway.cbre.com/Layouts/GKCSearch/DownLoadPublicUrl.ashx

[21] See https://researchgateway.cbre.com/Layouts/GKCSearch/DownLoadPublicUrl.ashx

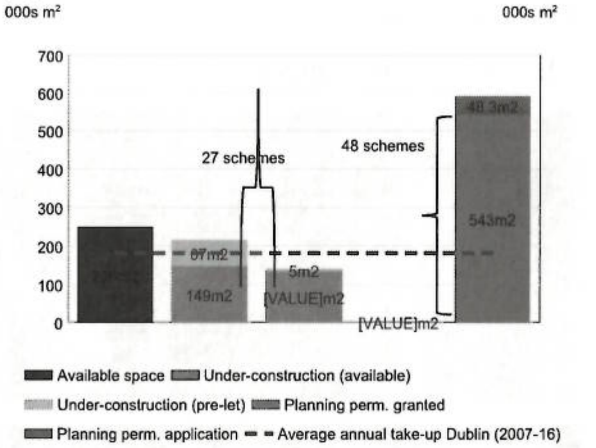
is likely that this would put further upward pressure on prices, at a time when there is a severe shortage of units for sale or rent.

Chart 3.2.1: Irish CRE capital and rental growth



Source: MSCI/IPD and Central Bank of Ireland calculations

Chart 3.2.2: Current Dublin office supply pipeline



Source: CBRE and Central Bank of Ireland calculations
Note: Data as at end of 2016, are a projection based on the assumption that every scheme in the planning process materialises. In reality, a number may not materialise or may proceed at a slower pace than envisaged at present.

4. Sectoral Developments

4.1. Banking

4.1.1. Domestic Banks (SIs)

[redacted].

[redacted]

[redacted].

4.1.2. International Banks

The increased level of engagement between Banking Supervision (BSD) and international banks has continued in Q1 2017. The total number of banks from which enquiries have been received currently stands at [redacted] As before, these enquiries have taken the form of discussions on potential new authorisations, notifications of potential balance sheet expansion and change of business type along with discussions regarding the potential establishment of investment firms [redacted]

[redacted] For the remaining [redacted] banks, we would rate [redacted] as having a medium likelihood of either seeking to establish ([redacted] banks) or expand banking activities from Ireland [redacted] The last [redacted] banks it is believed are unlikely to either seek to establish or expand materially their Irish presence. These assumptions are based on the quality of information and level of detail provided by the banks in engagements to date, the number and intensity of engagements with the respective banks and the time passed since last contact with the respective banks.

For those [redacted] banks that are believed likely to submit a notification of an increase in activities/change of business, BSD expect [redacted] to be Significant Institutions (SIs), falling under direct ECB supervision in conjunction with the CBI.[22] The other [redacted] banks will be Less Significant Institutions (LSIs) falling under the direct supervision of the Central Bank [redacted]

At this point in time it is difficult to predict the employment impact in terms of the potential numbers of staff that banks would move to Ireland as a result of possible Brexit-related developments. [redacted]

4.1.3. Internal Considerations

From the supervisory perspective it is clear that, should the [redacted] banks currently deemed likely to seek approval for expansion of business follow through on discussions to date by submitting formal requests in H1, banking supervision will require additional resources both in an authorisation and in an ongoing supervision capacity. Furthermore, an incremental resourcing stretch may also be felt due to being required to participate in the ECB led Comprehensive Assessment of those banks breaching the Significant Institution threshold of €30bn, most likely in the period directly after approval by the Central Bank.

The Directorate management team are advanced in the development of the resourcing plan for the Brexit related increased workload, with recruitment already underway. Nonetheless, resourcing remains an acute risk, with the demand for the skills likely to significantly intensify. In this context it is noteworthy that the domestic banks have also been raising concerns about their ability to attract and retain staff in the face of increased competition for resources from new entrants.

From a policy perspective BSD is working cross-departmentally with colleagues in FRG, INS, AMSD and others to ensure a consistent approach and that a consistent message is being delivered to banks with regard to Central Bank approvals for establishment and expansion. BSD have also contributed to Supervisory Board papers [redacted]

22 As of 1 January 2017 the first Irish based international bank to become a Significant Institution under the SSM was confirmed. The JST has been established and [redacted]

[redacted]

4.2. Insurance

4.2.1. Authorisations

The main activity in the Insurance Directorate as a direct result of the Brexit vote has been in relation to the number of queries for possible new authorisations. [redacted] Detailed discussions have been held with some entities but a number of other queries have only consisted of a single phone call to date. Several of the potential applicants are also looking at other options within Europe [redacted] This raises the possibility that some of these entities are trying to take advantage of regulatory arbitrage, despite Solvency II applying in all EU member states. The Bank has been insistent that it will only consider applications from entities which will have a substantive presence in Ireland, [redacted]

Many firms appear to be waiting for the UK to formally trigger Article 50 before submitting applications, notwithstanding that there seems little doubt it will happen. It is expected that several applications will be received in the next few months. The Authorisations team within the Insurance directorate has recently been expanded to deal with the large number of queries and expected number of actual applications. It should be noted that the directorate continues to receive queries and applications for new authorisations that are not related to Brexit.

There is a wide variety in potential applications in terms of size and types of business model [redacted] Most of the queries are in relation to non-life insurance; some of these are to write business in Ireland but many are for a European hub. Many of the queries relate to Lloyds or London Market business which could see an increased concentration for the Bank of this type of risk. [redacted] are from entities that already have a branch presence in Ireland and [redacted] have existing entities supervised by the Bank.

To ensure efficient processing of applications received a cross directorate discussion group has been formed with representatives from insurance, policy, risk, financial stability and legal. The main aims of the discussion group will be to:

- Review & discuss the current authorisations/pipeline;
- Identify key aspects of current authorisations at an early stage to identify areas of interest to other divisions;
- Ensure that issues identified are addressed in a timely manner and followed up; and
- Enable all divisions/departments to plan expected workloads.

4.2.2. Update on the impact on and preparedness of entities

The majority of Irish regulated entities have little or no direct business with the UK, although many high impact non-life firms do sell a portion of their business there, particularly in Northern Ireland. For the companies not selling in the UK, the impact of Brexit will be limited to the impact on financial markets in general and any economic slowdown in the markets to which they sell. As noted elsewhere in the report it is difficult now to identify the direct impact of Brexit on financial markets and economic performance but the experience to date has not been outside the levels allowed for in the stress testing performed by undertakings.

For those Irish undertakings that sell into the UK there is potential for their business model to be impacted. The extent of the impact will largely depend on the proportion of their sales that are to the UK and whether those sales are made via a branch or by using the passporting arrangements available within the EU. The undertakings assessments of the impacts and the plans they are making are being monitored by supervisory teams as part of their regular contact with the undertakings [redacted]

4.2.3. Potential impact on Irish consumers of UK companies exiting the Irish market

A significant amount of premium is written by UK entities selling into Ireland across life and non-life business and using both branches and passporting arrangements. Some of these entities have already contacted the Central Bank in relation to setting up subsidiaries to continue sales. However, some business based in Gibraltar have been offering business on a passporting basis. Though volumes of sales vary significantly from period to period, and these seem less likely to set up Irish subsidiaries. It has been well publicised that the Bank has concerns of the sustainability of some of the entities selling from Gibraltar and [redacted]

Hence it seems likely that the Irish insurance consumer will only suffer some limited impact from Brexit as the majority of businesses from the UK or Gibraltar currently selling in Ireland look to be making arrangements to continue doing so. However, there may be a small reduction in competition in some markets if some companies currently selling in Ireland cease doing so.

4.3. AMS and SMS Directorates

The Asset Management Supervision (AMS) Directorate and Securities and Markets Supervision (SMS) Directorate continue to have engagement meetings with firms enquiring about the authorisation process (Table 4.3.1 below outlines the entity types that are making enquiries). A significant number of these enquiries relate to Investment Firms seeking a MiFID authorisation. AMS are in the process of building out a team of five additional staff to ensure that the expected level of authorisation applications can be processed. The recruitment process has commenced to fill these additional roles.

[redacted] From the engagement meetings held, feedback received is that Boards of Directors in the UK are being presented with options by the Senior Management in the first and second quarter of the year. Key deciding factors include jurisdiction, outsourcing models and staffing requirements.

A more diverse cross-section of entity types and business models, such as [redacted] Central Securities Depositories ('CSDs') will increase the complexity of the entities supervised by AMS. The nature, scale and complexity of these entities will require extensive cross-directorate resources and co-operation in order to implement the appropriate authorisation and supervision processes. Cross Bank initiatives have already commenced with two separate taskforces established to assess expectations and processes in relation to the authorisation and ongoing supervision of [redacted] CSDs. Relevant taskforces are made of representatives from AMS, PSSD, MPD, FSD, Risk, Banking and Legal. [redacted]

A paper has been prepared [redacted] and has been discussed at the Policy Committee meeting on 2 March. Following this the paper will also be presented and discussed at the next Financial Stability Committee meeting on the 13 March. The outcome from these discussions will be included in the next BTF report.

Several firms, currently supervised by AMS, have advised that they plan to increase the level of activities they currently undertake in Ireland. One firm that had previously indicated its intention to seek a revocation has advised that they will now increase the services they currently offer as they seek to maximise the opportunities that a potential 'hard' Brexit could present.

Table 4.3.1: Brexit related enquiries by entity type

[redacted]

4.4. Market infrastructure

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

5. Authorisation Activity

5.1. Overview

This section is a collation of information from Divisions on engagement with firms and other activity in the context of Brexit. This document is updated on a monthly basis by the Supervisory Risk Policy team within the Supervisory Risk Division.

The document provides a high level overview of the Brexit related pipeline in each division as at **24 February** and a commentary on some related developments[23].

As at 24 February the Central Bank has received the following number of Brexit related authorisation queries:

Table 5.1.1: Brexit related enquiries received across divisions

[redacted]

AMS continue to report the highest level of enquires from firms and representative bodies since the previous update.

Of the Brexit related enquires as at 24 February, the engagement progress breakdown is as follows:

Table 5.1.2: Brexit enquiry method of engagement

[redacted]

[23] These figures have been provided by Divisions on a best efforts basis and provide an <u>indication</u> of the Brexit related activities/engagements in each division.

[24] Previous AMS figures have been reduced since previous update as a number of professional firm (no-name) queries have now been excluded from the Brexit log.

[25] In most divisions further meetings have been scheduled with firms over the coming weeks.

While the number of firms the Central Bank has held meetings with has risen to [redacted] as at 24 February, in reality the actual number of meeting engagements is significantly higher as we have met with a large number of firms on several occasions since the Brexit vote. This number will continue to rise significantly as the process develops.

To date, [redacted] Brexit related applications have been received as set out in the table below:

Table 5.1.3: Brexit enquiry form of engagement

[redacted]

5.2. New authorisations versus extension of activities[28]

Some areas (Banking and AMS) have experienced enquiries from firms seeking to extend activities based on current authorisations. In most cases the information provided by these firms to date indicates that the proposed extension of activities can be considered material.

Banking – Approximately [redacted] of the enquiries received to date in Banking have indicated an extension of activities based on current authorisation. The remaining are enquiries for new authorisations.

AMS – Approximately [redacted] of enquiries relate to new authorisations with [redacted] relating to enquiries in relation to an extension of activities. In the remainder of cases it is unclear what the specific intentions are as information is limited at this stage.

In the remaining sectors, enquires have been for new authorisations.

See commentary below for further information on each sector.

[26] Insurance have recently re-classified [redacted] "non-Brexit" related applications as "Brexit" related applications to be included as part of the Brexit monitoring exercise.

[27] [redacted]

[28] This breakdown is based on a rough estimation as information is limited in a lot of cases.

5.3. Banking

Banking have had Brexit-related contact from [redacted] since the UK vote. This contact encompasses a wide and diverse group of entities parented in several different countries, both within the SSM and from third country jurisdictions within the EU and globally. [redacted]

5.3.1. Challenges with the current pipeline including resourcing issues

While Banking have seen a significant increase in the number of initial queries regarding potential bank licence applications which have resulted in additional workload given the number of meetings involved, this has been manageable to [redacted]

5.3.2. Details of any contingency planning undertaken so far to meet expected increased demand

Banking Supervision has engaged with the Director, Credit Institutions and the Deputy Governor and outlined initial thinking in relation to additional resources which may be required should the potential applicants submit formal applications for authorisation.

5.3.3. Other relevant information/observations/concerns

[redacted]

5.4. Insurance

Insurance have had [redacted] insurance authorisation approaches - of these, [redacted] are Brexit related. The majority of these are seeking to establish bases for their pan-European businesses. At this stage, they are mainly non-life insurers, although some life insurers and reinsurers have also made contact.

[redacted] Brexit related applications have been received to date.

The remainder of enquiries to date have all been for new authorisations, rather than an extension of existing activities. This also includes a number of firms who are considering converting from a branch status to a full authorisation.

5.4.1. Challenges with the current pipeline including resourcing issues

The volume of potential authorisations is significantly above that which has been seen over the past few years. As such, should the pipeline materialise into actual applications this will have a significant impact on the Directorate.

There is currently a plan is place to address resourcing issues, which is subject to monthly review. The insurance authorisation team are currently in the process of expanding from two FTEs to twelve FTEs, through internal transfers and external recruitment. This will blend a mix of authorisation expertise, experience supervisory staff, experienced actuaries and new staff.

Outside of resourcing the broader challenges will include:

Increased Supervisory Complexity

- Potential new business lines being introduced that will require development of greater understanding within the Central Bank to give effective oversight (e.g. a significant increase in Lloyds market business). This will require additional resource or training;
- Increase in the amount of cross-border business being written from Dublin will increase the complexity of the authorisation.

Internal Models

- Potential for firms wanting authorisation with an internal model – and consideration of UK PRA approved models;

Governance

- Firms expecting to place reliance on UK outsourcing and governance and;

Impact on broader market

- Increase competition for Insurance expertise both for the Central Bank and the broader insurance market.

5.4.2. Details of any contingency planning undertaken so far to meet expected increased demand

Contingency planning includes:

- Currently in the process of expanding the insurance authorisation team from two FTEs to twelve FTEs, through internal transfers and external recruitment, as outlined above;
- Use of external actuarial resource to undertake technical reviews;
- Potential request for additional headcount, either temporarily or permanent (if it is likely that further authorisations will materially increase the business that needs to be supervised).

5.4.3. Other relevant information/observations/concerns

There is the possibility that following the Brexit vote firms, both from America and new start-ups, which would have traditionally gone to the UK would look to set up a base in Dublin. This could mark a permanent increased level of authorisation activity, depending as ever on the outcomes of the Brexit negotiations.

5.5. AMS and SMS

AMS continues to receive a significant and steady volume of queries in relation to the authorisation processes. [redacted]

These relate to a range of firm/entity types which are currently examining a potential relocation from the United Kingdom. Most enquiries continue to be with respect to MiFID Investment firms, with some of them very large sized internationally-branded firms.

The total number of firms that have contacted AMS with Brexit related enquiries to date is [redacted] and AMS has met with [redacted] firms, with a further [redacted] meetings planned. Most firms have intimated that a final decision on preferred location will be made by end of June this year.

As part of the MiFID application process within AMS, a 'pre application' or 'Keys Facts Document' (KFD) is always required which provides a summary of the key aspects of the applicant firm's proposed business model, governance, capital, outsourcing, services etc. The KFD stage includes an analysis of the rationale for authorisation and once AMS is satisfied with the KFD the applicant will be deemed ready to submit a formal application.

[redacted]

Resourcing
An additional five headcount is currently being recruited by the directorate to deal with the expected increase in applications for authorisation. The first round of interviews for some of the positions are commencing next week. In addition, the expertise within current supervision teams will be used for more complex applications.

5.6. Consumer protection

CPD have had contact from [redacted] firms/industry bodies. These enquiries are in relation to Payment Institutions and E-Money Institutions.

[redacted].

5.6.1. Challenges with the current pipeline including resourcing issues

The large volume of pre-application meetings has resulted in increasing demands on current resources. If a large percentage of enquiries were to materialise as applications, resources would be severely stretched. [redacted]

5.6.2. Details of any contingency planning undertaken so far to meet expected increased demand

Contingency resource bid proposed.

5.6.3. Other relevant information/observations/concerns

Most common specific enquiry is asking if there is a 'fast-track' for currently authorised firms.

6. Special Topic 1[29]

High level overview of the potential impact of a hard Brexit on Irish financial services channels

To date much of the Brexit commentary relating to financial services has focused on the impact on the UK financial services industry. As we move nearer to the UK triggering of Article 50, and following on from Theresa May's Lancaster House speech in January, the potential for a 'hard Brexit' is becoming an ever increasing possibility. What a hard Brexit might actually entail varies amongst commentators but we can assume it will at least mean that the UK will no longer be a member of the EEA, will lose all passporting rights associated with current EU membership and will be assessed as a 'third country' jurisdiction. Such a scenario is likely to significantly alter the landscape of the Irish financial services sector, particularly in the markets and investments sectors.

[redacted]

A hard Brexit, without adequate transitional arrangements, is likely to be extremely disruptive for the financial services sector. Brexit will necessitate a wide range of interrelated transformation programmes ranging from restructuring legal entities, gaining regulatory approvals, to connecting to new market infrastructure and moving staff to new locations. A recent PwC report for AFME examines banks' transformation programmes, and finds many are so complex that they may need to devise two-step interim contingency plans in order to mitigate the risks of disruption. According to the PwC report findings, banks are currently proceeding with two-year tactical plans to maintain continuity of service, but in order to maintain levels of service and market effectiveness these plans will depend heavily on and agreement being reached between the UK and the EU on the framework for an interim business model.

Below is a snapshot of what a hard Brexit might mean for the Irish financial services channels, particularly in the absence of a much touted transitional deal, any overarching equivalence determination or any bi-lateral agreements with the UK. All of these identified issues will require detailed further consideration as the negotiations evolve- both in terms of the Bank's response to the changing regulatory landscape and continued engagement with the impacted firms for the purposes of their on-going contingency planning. As with all Brexit commentary, this high level overview has been produced against the backdrop of on-going

[29] Gina Fitzgerald (FRG), Eoin Battigan (FRG), Maeve Butler (RES), Elaine Byrne (PSSD), Brenda Carron (MPD), Elaine Deegan (CPPA), Ruth Hogan Davis (MPD), Deirdre Mullally (FRG), Ray O'Connell (BSSD), Suzanne Power (MPD) and Des Ritchie (IFFS).

[30] *Impact of the UK withdrawal on Econ areas of competence*, 13 December 2016.

uncertainty and it remains difficult to predict the political and regulatory outcomes of the ultimate deal to be brokered between the EU and UK.

6.1. Markets

6.1.1. Investment funds

Given the level of legal/contract novation and repapering that will likely be required in this sphere, a hard Brexit would be disruptive for funds, particularly in the short term.

UCITS

By design, UCITS are domiciled in the EEA and are managed by an EEA UCITS Management Company. The UCITS regime provides a product passport which allows UCITS to be sold cross border throughout the EEA, as well as a Management Company passport which allows Management Companies manage UCITS in other Member States. The UCITS Directive does not have a third country regime. Post Brexit Irish UCITS will no longer be able to rely on the passport- which is currently widely used- in order to market to UK investors. Similarly, the 17 UK firms that currently hold passports to operate in Ireland on a Freedom of Services under UCITS would be precluded from doing so in the event of a hard Brexit.

AIFMD

The Alternative Investment Fund Managers Directive provides a passport to EU authorised AIFMs enabling them to manage AIFs within the EEA and market AIFs to professional investors in the EEA. Post Brexit, Irish AIFMs will no longer be able to passport their services and market their AIFs in the UK. In terms of impact on current activity, Irish AIFMs are currently marketing 451 sub-funds/standalone funds in the UK. There are 316 sub-funds and 36 standalones Irish AIFs being marketed only in the UK. Irish AIFMs are currently managing 29 UK based AIFs. Of the 324 EU firms holding passports to operate in Ireland on a Freedom of Services under AIFMD; 129 currently passport from the UK.

[redacted]

6.1.2. Investment services

MiFID

In a hard Brexit scenario, Irish firms would likely lose their right to passport MiFID services (relating *inter alia* to securities, funds and derivatives, including trade execution, portfolio management, investment advice, underwriting and ancillary services such as custody, credit and FX services, corporate finance advice and investment research) into the UK.

In terms of impact based on current figures:

- Of the 34 branches operating in Ireland on a Freedom of Establishment basis, 32 (94%) are UK firms.
- Of the approximately 2,600 EEA firms holding passports in Ireland on a Freedom of Services basis, 80% of these passport from the UK.
- Of the 19 branches operated in other EEA countries on a Freedom of Establishment basis by Irish firms, 13 (68%) are UK based.

[redacted]

- Of the 68 Irish firms holding passports to operate in other EEA countries on a Freedom of Services basis; 62 (91%) passport to the UK.

MiFID II will introduce a third country regime that could apply to the UK post Brexit; this would allow UK firms a number of potential gateways through which to access the EU markets. However, none of these gateways provide a passport in respect of retail and 'opt-up' professional clients[32]. [redacted]

6.1.3. Corporate Finance/Primary and secondary markets

Prospectus Directive

The Prospectus regime provides a passport so that prospectuses approved by the NCA of the Home Member State may be passported within the EEA. This regime may also be used by third country issuers (such as the UK in a post Brexit scenario) whereby the third country issuer's prospectus will be reviewed by the NCA in the Home Member State and once approved, it can avail of the EU passport. Brexit is likely therefore to result in Ireland and other Member States seeing an increase in the number of prospectus approval applications from entities who traditionally sought approval in the UK. The number of entities seeking a listing on the ISE- the Competent Authority for admission to listing in Ireland- is also likely to increase.

Post Brexit, it is likely that companies that have dual listings in the UK and Ireland will need to comply with both UK and EU legislation – which could be more onerous and costly if these regimes diverge.

6.2. Financial market infrastructures

6.2.1. Central Securities Depositories (CSDs)/Securities Settlement Systems

Euro denominated securities traded on the Irish Stock Exchange (ISE) are settled in CREST, the settlement securities system (SSS) operated by Euroclear UK and Ireland (EUI). CREST is operated as an ancillary system to TARGET2 (T2) and as such settles the cash leg of all euro denominated transactions. [redacted]

[redacted]

[32] A retail client who has requested to be considered a professional client

6.2.2. Central Counterparty Clearing Houses (CCPs)

[redacted]

[redacted]

[redacted]

6.2.3. Trade Repositories

[redacted]

6.3. Banking

[redacted]

[redacted]

The level of cross border transaction activity in retail banking is limited, with consumers largely purchasing retail products from Irish domiciled banks.

In the event of a hard Brexit, Irish authorised banks would lose their entitlement to passport services into the UK and be precluded from providing cross border services covered by CRD into the UK. Such services include a range of banking services, including deposit taking, lending and other forms of financing (including guarantees), financial leasing, payment services and corporate finance advisory services.

[redacted]

[34] As at YE 2016.

Similarly, the UK could no longer passport such services into Ireland. In terms of impact, there are currently 11 UK branches operating in Ireland and 90 UK credit institutions have previously notified the Central Bank of their intention to provide their services in the State on a cross border basis. Such channels would no longer be available to these UK institutions. 6 Irish credit institutions currently operate via branches in UK.

6.3.1. Resolution issues

A key element of the EU resolution framework is the enhanced cooperation between national resolution and supervisory authorities and a defined joint decision making process to facilitate effective cross border resolution action should it be required. Following a UK exit, the nature of cooperation and the decision making process will change. The UK authorities will no longer be members of EU resolution colleges for EU banks and resolution colleges for UK banks will be replaced by less formal crisis management groups; thus bilateral non-binding memoranda of understanding and cooperation agreements will need to be negotiated between the relevant authorities to cover cooperation and information sharing. [redacted]

A hard Brexit could also impact the effective application of the bail-in tool to an Irish institution and its stock of MREL eligible liabilities, should relevant bail-inable liabilities be governed by UK law, e.g. deposits and debt issued in the UK. Contractual clauses would be required for these third country liabilities to be recognisable for bail-in purposes, which may be difficult for banks to address for liabilities already in issue.

6.3.2. Deposit Guarantee schemes

The Deposit Guarantee Scheme Directive introduced a harmonised level of deposit protection by all EU deposit guarantee schemes to preclude any competitive distortions driven by varying levels of protections across jurisdictions. Post Brexit, the UK could raise its compensation limit, potentially incentivising Irish depositors to move their deposits to UK Banks.

Assuming UK bank branches remain in Ireland, depositors could be covered by the UK compensation framework rather than the Deposit Guarantee Scheme Directive.

6.3.3. Risk weighting of exposures to UK based institutions

In the absence of an equivalence designation by the Commission under CRR, Irish banks and investment firms would be required to apply higher risk weightings to their exposures to UK based institutions.

6.3.4. Holding companies

If the UK is deemed not to apply consolidated supervision equivalent to the provisions of CRD/CRR, EU regulators may opt to apply consolidated supervision to the whole group or impose more burdensome prudential measures on the institutions within the EU.

[redacted]

[redacted]

6.4. Insurance

In terms of legislative divergence post Brexit, it seems unlikely that the UK (who are often cited as a driving force behind the development of the Solvency II regime in the EU) would be minded to diverge greatly from this regime post Brexit in the short to medium term, particularly given the scale of cost already borne by industry in implementing Solvency II.

6.4.1. Freedom of Establishment and Freedom of Services

As with other sectors, the Insurance sector will also be impacted by the loss of the potential to passport in a hard Brexit scenario. There is a mixture of business models among Irish authorised firms active in the UK, with some companies selling via a UK branch (i.e. on a Freedom of Establishment (FOE) basis) and others direct on a Freedom of Services (FOS) basis (these being mainly life companies). In order to continue to do business in the UK, such undertakings would likely have to obtain UK authorisation as a third country branch, establish a UK subsidiary (with its own regulatory capital) or acquire an existing UK undertaking.

The impact on the running off of existing business- particularly in the case of life insurance policies operating on an FOS basis into the UK- may pose significant difficulties, with the potential need for entire portfolio transfer to a UK undertaking.

Some of the largest firms in the sector write insurance business on an all-island basis. An exit agreement failing to include access to UK markets by Irish based firms would mean that such cross border business written by Irish domiciled undertakings would no longer be permissible. [redacted]. The severity of this impact will vary depending on the business model of individual insurers, with those whose business models are predominately based upon underwriting UK based risks naturally the most affected.

In addition to Irish authorised firms writing business into the UK, two of the largest general insurers writing business in the State are branches of UK regulated entities. [redacted]

Some commercial lines business in the domestic market is predominantly underwritten by UK entities (Lloyds vehicles mainly) operating in Ireland under FOS rules. The Irish risk business written by these firms is likely to be small relative to the overall business and as a result these firms may leave the Irish market in a hard Brexit scenario. This will have a knock on impact on the supply of commercial lines and may lead to a much needed hardening of the market in this segment. In turn, for some commercial lines, Brexit might present an opportunity for domestic firms to increase the diversity of their current portfolio in a market that may well harden due to reduced supply.

6.4.2. Reinsurance

In the context of reinsurance, Solvency II does not set any standards for the establishment of a branch, however requires that reinsurers from third countries should not be treated more favourably than EU reinsurers. Under Solvency II EU Member States may however impose regulatory restrictions on the ability of EU insurers to reinsure with third country reinsurers in non-equivalent third countries. If the UK is not formally determined to be equivalent by the EU, this could affect the ability of UK reinsurers to do business with EU insurers.

6.4.3. Third Country Branches

The Solvency II Directive sets out high level principles and conditions for authorisation of Third Country Branches. EIOPA has also developed guidelines on the authorisation and ongoing supervision of Third Country Branches. There are currently no third country (re)insurance branches authorised to operate in Ireland at present but a hard Brexit may lead to interest in this model. It is important to note that third country branches cannot passport into the EEA which would limit the attractiveness of the establishment of a third country branch for many UK insurers.

6.4.4. Group Supervision

In relation to supervision colleges, where there is a UK member and especially if the parent company is a UK (re) insurer, there will be an impact on the operation of the college in a hard Brexit scenario. [redacted]

Depending on the nature of group restructurings prompted by Brexit, the Central Bank could become responsible for group supervision which would give rise to significant new supervisory responsibilities.

6.5. Cross cutting issues

6.5.1. Consumer protection

The loss of passporting rights raises a number of risks from a consumer protection perspective:

- The impact of the withdrawal of certain UK-based providers from the Irish market because of the removal of passporting permissions – in particular on those consumers who hold long-term products such as life assurance and pension products with UK financial services undertakings.
- The impact of the potential entry of new market participants post-Brexit – in particular if low-cost providers in the insurance sector were to take market share by reducing their costs to the detriment of adequate customer service or claims payment.
- The potential risks to Irish consumers of financial service providers utilising different delivery channels and organisational structures in order to counteract the loss of passporting rights and access to the single market.

There are also the second-round consequences on Irish consumers of any hard Brexit-related economic shock – for example the potential negative impact on the repayment capacity of indebted consumers, the effect on distressed borrowers and the levels of mortgage arrears.

6.5.2. Anti-money laundering

The 4th anti money laundering Directive provides for circumstances in which an EU person subject to the Directive can rely on another person to have performed due diligence on a customer. This is only permissible for 3rd country intermediaries where the intermediary is subject to equivalent rules and supervision as set out in the Directive. The UK could be subjected to additional restrictions if its anti-money laundering regime is not considered equivalent to the EU.

7. Special Topic 2[35]

Impact of Brexit on the widespread use of English law contracts for EU financial transactions

7.1. Background

Most financial transactions in the EU - three quarters of the hedging activity, more than three quarters of the FX activity, half of the lending and half of the securities transactions - take place in the UK, irrespective of where the counterparties are based. Because of this, the development and interpretation of these transactions has developed over time within the English legal system. In relation to derivative or repo transactions, the standard contracts developed by the financial industry (ISDA master agreement and credit support annex, GMRA) are drafted to operate under the legal regimes of English (or New York) law. As a result, the English legal system is familiar with the issues and the English courts have developed a body of precedents in dealing with such disputes.

When the UK leaves the EU it remains to be seen how existing and future cross-border transactions will be affected, and Governor Carney has warned that difficulties in transacting and hedging could affect market liquidity, and consequently overall financial stability. The International Swaps and Derivatives Association (ISDA) have suggested amendments to Brexit-proof contracts but because nothing has yet been tested in court, particularly in relation to existing contracts, there may be difficulties with enforcing contracts post-Brexit which could have knock-on effects in relation to hedged risks.

7.2. Key issues

Eurointelligence has stated that "*people think finance is about numbers, but money is credit and credit is about contract enforceability*". The key legal issues in relation to cross-border contract enforceability are choice of law clauses, jurisdiction clauses, and enforcement of judgments – ironically areas where the harmonisation of EU rules which the UK worked hard to achieve has been very successful from a commercial perspective.

Generally, in line with the principle of freedom of contract, counterparties include a jurisdiction or arbitration clause specifying their choice of venue for any litigation (also called a forum selection clause), and a choice of law clause specifying which laws the court or tribunal should apply to each aspect of the dispute. Where English law is chosen as the governing law, jurisdiction in respect of disputes is generally also conferred on the English courts. Choice of law/jurisdiction clauses in financial contracts frequently opt for English law/courts for the following reasons:

- independent reputation of the English judicial system,
- availability of relevant commercial legal expertise,
- legal certainty due to the body of relevant caselaw and principle of *stare decisis* (precedent),
- conversely, flexibility of the common law system in dealing with a fast-changing industry,

[35] Gina Fitzgerald (FRG), Milada McCabe (FRG) and Margaret Devaney (LEG).

- pro-business forum due to the City of London location,
- the convenience of the international language of financial services being English.

The key issues, including the possible implications of Brexit on these, are explored below.

7.2.1. Choice of law

In the EU, the Rome I[36] and Rome II[37] Regulations (Rome) deal with applicable law for contractual and non-contractual obligations respectively. Subject to limited exceptions, these Regulations give effect to the parties' choice of applicable law, regardless of whether a party is located in the EU or whether the chosen law is the law of a Member State (MS). Thus, post-Brexit English governing law clauses should continue to be recognised by EU courts, irrespective of the domicile of the parties.

As directly applicable EU Regulations, Rome will cease to apply in the UK once the UK leaves the EU. It remains to be seen whether the UK government will take any steps to introduce replacement rules which take effect on Brexit (e.g. to replicate the Rome rules in domestic legislation). If no such active steps are taken by the UK government, the common law position on the law applicable to contractual obligations prior to Rome I and any prior relevant legislation may be found to apply. ISDA has advised that, under the common law, English courts would be likely to continue to recognise and accept the choice of English law in respect of contractual obligations and that the choice of English law in relation to non-contractual obligations[38] is likely to be influential in an English court's assessment of the law applicable to such obligations.

7.2.2. Jurisdiction clauses

Currently, EU courts are bound to respect jurisdiction clauses in favour of another EU court of the basis of the recast Brussels Regulation[39] (Brussels) and their courts will decline to hear proceedings. Where it is an exclusive jurisdiction clause, this will be respected even if proceedings were commenced elsewhere first (to avoid "torpedo" litigation, where jurisdiction is determined by issuing proceedings, giving rise to delaying tactics or forum shopping).

Post-Brexit, Brussels will no longer apply to the UK. Before the English courts, ISDA has advised that an English jurisdiction clause would likely be respected on the basis of common law rules. In EU courts, the UK will be a third country so recognition of an English jurisdiction clause will depend on the position under national law and it is not certain that an EU court would be obliged to decline jurisdiction or, in respect of a non-exclusive jurisdiction clause, to stay proceedings on the basis that proceedings were first initiated in the English courts.

The EU has also concluded two similar international conventions (Lugano, Hague) [40], which have direct effect in MS (although for inter-EU matters Brussels takes precedence). These

[36] Regulation 593/2008/EC of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

[37] Regulation 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations.

[38] The ISDA Master Agreement is silent on the governing law for non-contractual obligations. However, parties commonly elect in the ISDA Schedule to apply English law as the governing law of non-contractual obligations. The Bank's own template ISDA agreement contains such an election.

[39] Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I recast).

[40] Lugano is the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters,

conventions will no longer apply post-Brexit unless the UK independently ratifies these conventions.

7.2.3. Recognition and Enforcement of Judgments

Under Brussels, there is also an EU wide system for recognition and enforcement of judgments. All MS courts must recognise and enforce virtually all judgments of other MS courts via a simplified administrative process.

Post-Brexit, Brussels will no longer apply to the UK and enforcement of a judgment issued by an English court in other MS (and vice versa) will depend on the rules of private international law of the jurisdiction in which enforcement is sought, and what international agreements apply. There will likely be more procedural and substantive conditions to enforcement and, for a number of EU jurisdictions, significant hurdles are anticipated. For example, in MS such as Germany and France which have existing domestic law procedures for the recognition and enforcement of third country judgments, it should still be possible to enforce an English judgment post-Brexit, but it will take longer and cost more, as there is no simplified process in place. In other jurisdictions, such as Slovenia, complexities may arise as apparently reciprocity is required in order to enforce a foreign judgment. In Ireland, for judgments from non-EU/Lugano/Hague countries, the common law rules apply with significant limitations such as that the judgment must be final, must be for a definite sum (i.e. no non-monetary judgments such as enforcing performance) and the foreign court must have had competent jurisdiction[41]. Accession to Lugano/Hague would provide a process for reciprocal enforcement with other contracting states[42], but less streamlined than under Brussels as various Convention conditions must be met.

7.3. Existing contracts

As outlined above, the choice of English law/English jurisdiction clauses may continue to be respected and applied by courts in other MS and in England itself. Also, as above, there are good reasons why counterparties may still want to their contractual dealings to be governed by English law and, importantly, the core principles of English contract law will not be affected by Brexit. However much of UK law (e.g. in the financial services area) currently derives from the EU, so that how it is dismantled and reorganised may have an unpredictable impact on existing contracts (e.g. in relation to the loss of passporting rights pursuant to various EU financial services directives and the absence of any immediate equivalence decision to replace such lost rights). For this reason, there is little means of Brexit-proofing existing contracts, as any changes made to legal documentation now could risk conflict with unanticipated future changes designed to ensure continuity of contracts. In addition, the developed private international law (conflict of law) rules regarding financial market transactions are based on the UK being a member of the EU, so again this may have an impact that is difficult to predict. These developments would certainly affect any litigation strategy planned for by commercial parties to existing agreements. In relation to enforcement,

---

Hague is the Convention of 30 June 2005 on Choice of Court Agreements. Briefly, Lugano extended the Brussels regime to EFTA countries whereas Hague range is international.

[41] In addition in 2016 the High Court ruled in Ambient Shpk v Enel SpA that for an Irish court to have jurisdiction to enforce a foreign (non-EU) judgment in Ireland a "solid practical benefit" must accrue to the applicant in pursuing the proceedings in Ireland – e.g. assets within the jurisdiction would be a persuasive factor.

[42] Currently only the EU, Mexico and Singapore have ratified Hague – the US has signed but not ratified – thus the Convention is of limited reach internationally, but all EU MS (apart from Denmark) are contracting states.

as outlined above it will be more expensive and time consuming to enforce an English judgment in another MS, and this may be difficult to factor into existing transactions.

7.4. Future contracts

In relation to governing law, ISDA advise that the alternative of selecting New York law as a governing law is a possibility but there would be no real advantages in terms of the recognition of judgments of the US courts by either the EU or the English courts. ISDA also advises against changing the governing law of the ISDA Master Agreement from English or New York governing law to any third country governing law, as this would also necessitate further consideration of the jurisdiction clause, the application of ISDA commissioned netting and collateral opinions and the requirement of any contractual recognition provisions relating to bank resolution.

Post-Brexit, without Brussels, jurisdiction may be determined according to the other international conventions but they may not be as appropriately tailored, for example under Hague reciprocity only applies where parties have agreed to an exclusive jurisdiction clause, and under Lugano the court where proceedings commence has priority (giving rise to torpedo litigation). In the absence of any formal reciprocal regime, the English courts would apply the common-law principle of *forum conveniens* to determine the appropriate forum, but clearly this will not aid legal certainty in cross-border disputes.

Similarly, without Brussels, how a court in another EU MS will recognise or enforce a UK court's judgment will depend on that MS domestic rules and the arrangement in place with the UK. Individual arrangements with the UK may be coloured by the fact that there is an economic benefit to being a forum of choice for commercial parties, which other MS may be keen to exploit (e.g. the Netherlands is currently promoting their new commercial court specialised in hearing complex international cases, in English, as a cheaper alternative to London).

7.5. Other Issues

Post-Brexit, and especially given the EU Capital Markets Union project, there is likely to be increased interest in having widely accepted standardised transaction documentation that is not so tied to a non-EU jurisdiction. Choice of arbitration as a dispute resolution mechanism may become more attractive, given that arbitration is not covered by Brussels and English arbitration awards can be enforced under the New York Convention to which all EU MS are signatories and to which the UK is already a signatory in its own right.

In relation to service of legal proceedings/documents, the EU Service Regulation[43] simplified the service of documents in cross-border cases, and if this no longer applies there may be increased time and complexity in litigating, however appropriate clauses inserted in commercial contracts could overcome this.

It has been suggested that anti-suit injunctions may be used in the future when the UK is no longer bound by Brussels and the Court of Justice of the European Union (CJEU) case law holding such injunctions incompatible with Brussels – this means where another MS court fails to respect an English jurisdiction clause, the English court could attempt to injunct the party commencing proceedings in that other MS.

[43] Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extra-judicial documents in civil or commercial matters.

Litigation in the UK in relation to the type of constitutional issues surrounding Brexit may cause further uncertainty in how the English legal system deals with disputes with a Brexit angle, e.g. where a termination clause is invoked in relation to non-performance due to Brexit related issues. For example, a challenge to UK legislation being passed that is incompliant with still existing EU obligations, or challenges to the Brexit deal being negotiated – while commercial contracting parties may not be directly involved in the litigation, the legal uncertainty could make their own disputes very difficult to assess or advise on.

7.6. Conclusion

Harmonisation of the rules on jurisdiction, choice of law and enforcement of judgments enables better assessment of litigation risk and more accurate pricing of commercial transactions. As described above, Brexit raises uncertainty in the application of these key rules to a large proportion of EU financial transactions. This could give rise to transaction price volatility and also have further destabilising effects – liquidity planning is affected when enforcing contract performance becomes unpredictable, and doubt over the interpretation or validity of cross-border insurance contracts makes hedging unreliable. Continental retail banks rely on short-term deposits and tend to lend at fixed rates, so they need to hedge their interest rate exposures in order to maintain stability. The details in relation to reciprocity and enforcement will depend of course on the deal ultimately worked out, but the risk remains that uncertainty in the application of legal rules could affect financial stability.

It is true that there are many reasons why the English legal system is chosen by contracting parties, some of which are unconnected with membership of the EU and would be unaffected by Brexit. However, in December 2016 the English Bar Council reported "*a number of cases where parties are being advised not to choose English jurisdiction clauses in their contracts, where previously this would have been an almost automatic choice, because of the uncertainty surrounding the jurisdiction and judgments regime. Similarly, anecdotal evidence in September 2016 suggests that cases are already being commenced in other EU jurisdictions which would otherwise have been commenced in England due to the uncertainty over the ultimate enforceability of an English judgment*". An interesting consideration is whether Ireland, with the same common law system and language as the UK, could provide an alternative jurisdiction of choice.

8. [redacted]

8.1. [redacted]

[redacted]

1. [redacted]
2. [redacted]
3. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

8.2. [redacted]

8.2.1. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

8.2.2. [redacted]

[redacted]

[redacted]

8.2.3. [redacted]

[redacted]

[redacted]

8.2.4. [redacted]

[redacted]

8.3. [redacted]

[redacted]

8.4. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

8.5. [redacted]

[redacted]

1. [redacted]
2. [redacted]
3. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

2017 Q1 Official Senior Management Brexit Engagements

16 February 2017 - Transcript of Governor Philip R. Lane interview with Todd Buell and Hans Bentzien, Wall Street Journal

Speeches

23 February 2017 - "Prospects for the Irish Economy" Speech by Governor Philip R. Lane at the Cork Chamber of Commerce, http://www.centralbank.ie/press-area/speeches/Pages/ProspectsfortheIrishEconomy.aspx

22 February 2017 – 'Some perspectives on Brexit', remarks by Sharon Donnery, Deputy Governor, at the Irish Centre for European Law, Royal Irish Academy, Dublin

2 February 2017 - Remarks by Directors of Asset Management Supervision, Michael Hodson, at PWC's Alternative Investment Funds Seminar

31 January 2017 - Remarks by Governor Philip R. Lane to the London Irish Business Society

23 January 2017 - Remarks by Gerry Cross, Director of Policy and Risk, at Brexit and Asia: Implications for Financial Services in Ireland Event

17 January 2017 - Address by Director of Policy & Risk, Gerry Cross, at Irish Funds Breakfast Briefing on 13 January 2017 and the Central Bank's Independent Fund Directors Briefing on 16 January 2017

Upcoming

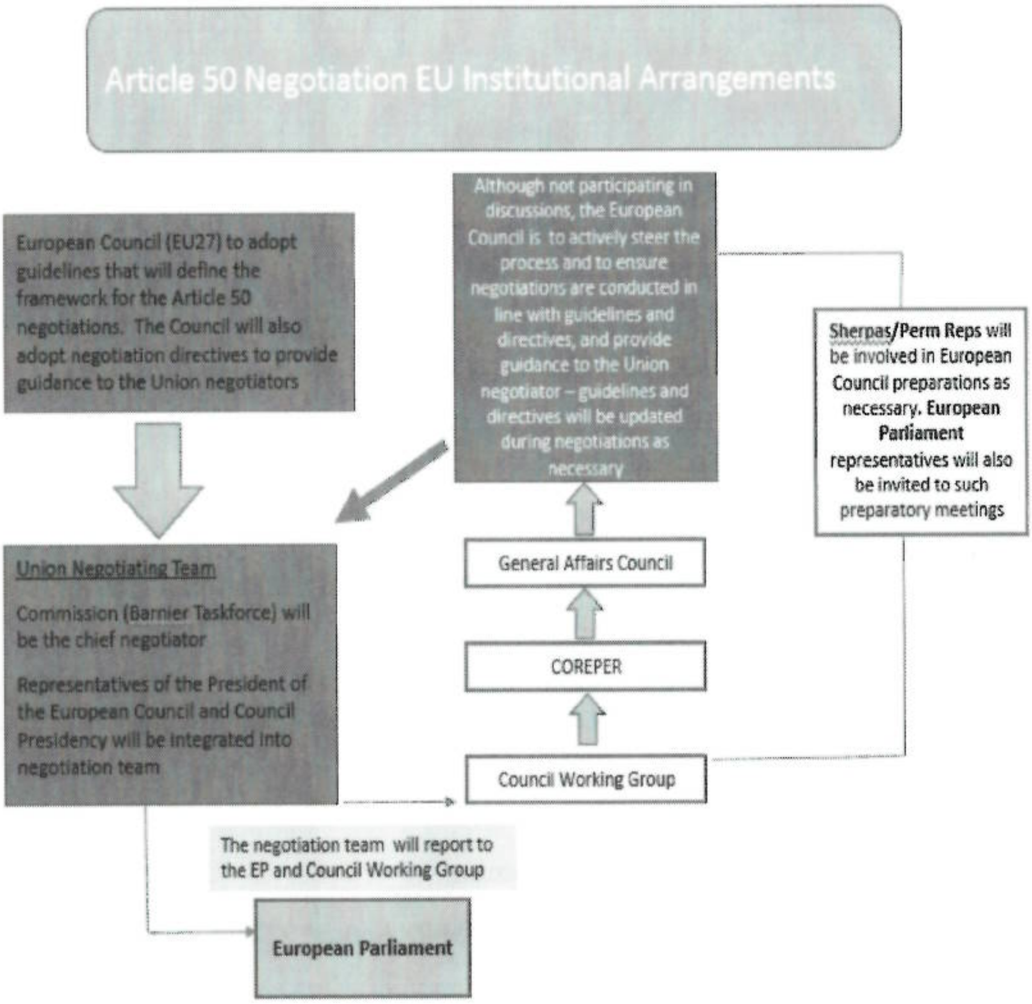
9 March 2017 – Sylvia Cronin to speak at KPMG Annual Client Event, topic 'Brexit & Authorisations'

14 March 2017 – David Cobley panellist at RiskMinds Insurance 2017 Conference – topic 'Regulatory discussion on Brexit and the insurance industry'

23 March 2017 – Sharon Donnery panellist at global Capital Markets, topic 'Brexit & Global Capital Markets [Chatham House Rules]

Appendix 2: EU Institutional Arrangements

Figure 1: EU institutional arrangements for Article 50 negotiation (compiled by DoF)



Appendix 3 : Banking

[redacted]

Glossary

AFME	Association for Financial Markets in Europe
AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Management Directive
AIFM	Alternative Investment Fund Manager
AIG	American International Group
BoJ	Bank of Japan
BTF	Brexit Task Force
CBI	Central Bank of Ireland
CCP	Central Counterparty
CFO	Chief Financial Officer
CJEU	Court of Justice of the European Union
CRD	Capital Requirements Directive
CRE	Commercial Real Estate
CRR	Capital Requirements Regulation
CSD	Central Security Depositories
CSDR	Central Securities Depository Regulation
ECB	European Central Bank
ECON	European parliament's economic and monetary affairs committee
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
EMI	Electronic Money Institutions
EMIR	European Market Infrastructure Regulation
ESMA	European Securities and Markets Authority
ESRI	Economic and Social Research Institute

EUI	Euroclear UK and Ireland
FDI	Foreign Direct Investment
FMI	Financial Market Infrastructure
FOE	Freedom of Establishment
FOS	Freedom of Services
FSC	Financial Stability Committee
FTA	Free Trade Agreement
FTE	Full Time Employee
GDP	Gross Domestic Product
GMRA	Global Master Repurchase Agreement
HoSG	Heads of State and Government
ICAAP	Internal Capital Adequacy Assessment Process
IPU	Intermediate Parent Undertaking
ISDA	International Swaps and Derivatives Association
ISE	Irish Stock Exchange
KFD	Key Facts Document
LCH	London Clearing House
LSI	Less Significant Institutions
MiFID	Markets in Financial Instruments Directive
MIFIR	Markets in Financial Instruments Regulation
MPC	Monetary Policy Committee
MREL	Minimum requirement for own funds and eligible liabilities
MS	Member State
NCA	National Competent Authority
PI	Payment Institution
PMI	Purchasing Managers Index
PRA	Prudential Regulatory Authority

PSPP	Public Sector Purchase Programme
PwC	Pricewaterhouse Coopers
QNHS	Quarterly National Household Survey
REIT	Real Estate Investment Trust
RICS	Royal Institute of Chartered Surveyors
SFTR	Security Financing Transactions Regulation
SI	Significant Institution
SITC	Standard International Trade Classification
SME	Small and Medium Enterprise
SSM	Single Supervisory Mechanism
SSS	Securities Settlement System
UCITS	Undertakings for Collective Investment in Transferable Securities
VAT	Value Added Tax