

Regulatory Impact Analysis (RIA)	
Title of legislation:	General Scheme of the Migration of Participating Securities Bill 2019
Department:	Department of Finance / Department of Business, Enterprise and Innovation
Date:	1 <sup>st</sup> July 2019
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## 1. Policy Context

### Background

Central Securities Depositories (CSDs) are specialist financial institutions that hold securities and facilitate trading between market operators. CSDs are a vital and systemic part of market infrastructure that enable the effective functioning of settlement systems.

Any transaction in securities must be followed by a post-trade process leading to the settlement of the trade through the delivery of securities to the buyer against the delivery of cash to the seller.

By holding securities in a CSD, brokers or other financial entities can easily transfer ownership of securities through electronic book entries in a central register instead of being forced to deliver a physical transfer of the securities to complete a trade.

In the European Union all Member States, other than Ireland, have a domestic CSD traditionally associated with their Stock Exchange. As a result of the close historic links between the Dublin and London Exchanges, Ireland has relied on a CSD based in the United Kingdom (UK). This CSD is operated by Euroclear UK & Ireland and utilizes a settlement system called CREST. CSDs operating in the Union are subject to a European regulatory regime as set out in the Central Securities Depositories Regulation (CSD-R).<sup>1</sup>

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<sup>1</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories

In addition to the regulatory regime that applies, it also provides for an equivalence regime for third country based CSDs in order for them to provide settlement services in the European Union. To date no equivalence decision has been given to any third country settlement system under CSD-R and the structure of equivalence means it can be withdrawn within a short period of time by the Commission.

### **Industry response to Settlement issue**

The uncertainty over the future relationship that the UK will have with the European Union post-Brexit and the importance of settlement systems to the equity market has meant the Irish market has examined a number of options to deal with this issue.

Following a series of consultations with the Irish market over a number of months, Euronext Dublin (formerly the ISE) announced in October 2018 that it would transfer the settlement of trades in Irish equities and other exchange traded instruments from CREST to Euroclear Bank which is a CSD based in Belgium.

### **Contingency planning**

As part of its Brexit contingency planning, the European Commission adopted a temporary and conditional equivalence measures in December 2018 for UK based CSDs that will allow the Irish market to continue using the current settlement system until March 2021 in the event of Hard Brexit.

Amendments to the Irish Settlement Finality rules to support the Commission equivalence decision were passed in the Brexit Omnibus Act in February 2019 and are subject to a Ministerial commencement order in the event of a Hard Brexit.

Once the United Kingdom leaves the European Union and post March 2021, the CREST system will no longer be able to provide services into Ireland or any other Member State, unless an equivalence decision is granted.

Therefore migration of the Irish market must now be completed before March 2021 - the date set by the EU Commission's temporary equivalence measures adopted in December 2018 as part of the EU's general Brexit contingency planning.

### **Market Migration**

Following the decision by Euronext Dublin to move its settlement to Euroclear Bank, an industry led Working Group and Steering Board were established in January 2019 to prepare a White Paper setting out the new settlement model for the market. The White Paper was published in May 2019 and the Working Group has now transitioned into a Market Implementation Group to oversee the delivery of the project.

The White Paper set out the options available to the market to effect the actual migration from CREST to Euroclear Bank based on legal advice provided to them by Arthur Cox.

Two possible migration mechanisms are being considered – individual schemes of arrangement and migration through legislative action:

- 1) Issuers can effect their migration through an individual scheme of arrangement under Part 9 of the Companies Act 2014. However, this process is legally complex and costly, particularly for smaller issuers. It also increases the potential risk of the individual scheme not succeeding in the timeframe available.

Individual arrangements would also make it extremely difficult to coordinate a single migration date for the entire market which is a key requirement from an operational risk perspective.

- 2) In light of the identified risk of individual schemes of arrangement, Euroclear Bank and industry representatives have asked the Departments of Finance and Business, Enterprise and Innovation to facilitate migration through legislation to allow for a more coordinated migration of the market from CREST to Euroclear Bank and reduce the legal and administrative burden on issuers. The proposed legislation will also make consequential amendments to certain provisions in the Companies Act 2014 to account for the change in settlement model.

## **2. Policy Objective of the Proposal**

To enact legislation that will allow for the migration of all Irish securities held in the CREST system on a given date (the "migration date") to Euroclear Bank in an orderly manner and to make consequential amendments to the Companies Act 2014.

## **3. Policy Options**

1.	Do nothing.
2.	Enact a legislative measure

## **4. Identification and description of options**

Option	Benefits	Impacts
1. Do nothing.	No State intervention required.	Risk that the transition will be disorderly and disruptive to the stability of the Irish Market with potential disruption to approximately €380 million in Stamp Duty. Potential risk that the Irish market will be seen as uncoordinated and unsafe.

			Reputational damage to Ireland's offering as a leading location in the area of financial services.
2.	Legislate for the migration to Euroclear Bank.	Coordinated and orderly migration from CREST to Euroclear Bank. Mitigate risks to financial stability and the continued collection of stamp duty.	Risk of legal challenge.

## 5. Impact Analysis

**(a) National Competitiveness (incl. employment)**

This proposal aims to reduce the burden and cost to Irish listed issuers from having to move a mandatory process to another jurisdiction due to the decision of the United Kingdom to leave the Union. This measure will provide clarity and certainty to the Irish market and maintain its attractiveness to external parties.

**(b) Socially excluded or vulnerable groups including gender equality, poverty, people with disabilities and rural communities;**

The proposal is not envisaged to have any impact on socially excluded or vulnerable groups including gender equality, poverty, people with disabilities or rural communities.

**(c) The environment;**

The proposal is not expected to have any impact on the environment.

**(d) Significant policy change in an economic market including impacts on competition and consumers;**

The migration to Euroclear Bank is a fundamental change in market processes. However, these changes are a result of the market's reliance on UK based systemic infrastructure and the decision of the UK to leave the European Union.

Once the UK becomes a third country, the Irish market will no longer be able to access CREST to settle trades under CSD-R. If the Irish market is to continue to operate post Brexit it must complete the migration before the end March 2021, which is when the European Commission's equivalence decision will expire.

This proposal seeks to mitigate the identified risks and potential market disruption as a result of the migration. It will provide issuers with an optional migration mechanism that is less burdensome to implement.

**(e) North-South, East-West relations;**

The proposal is not expected to have any impact on North-South, East-West relations. The objective of the proposed legislation is to facilitate the migration of the Irish securities market from its current settlement system based in London to a Member State as a result of the decision of the United Kingdom to leave the European Union.

**(f) The rights of citizens/human rights;**

There will be a variation of shareholder rights as Euroclear Bank operates under Belgian Law. However, this is a core characteristic of the intermediated securities model operated by Euroclear Bank, and used by a significant number of issuers globally.

If a shareholder does not wish to hold their shares through Euroclear Bank they can vote against the proposal at the Extraordinary General Meeting (EGM) which will be required to be held by the company prior to any migration. They can also choose to take possession of their shares in certificated form prior to the migration date if they do not wish to have their shares held in Euroclear Bank.

The proposal is not expected to have any impact on human rights.

**(g) Compliance burden on third parties e.g. citizens and business.**

As there is no obligation imposed on an issuer to avail of this measure there is no compliance burden.

**6. Consultation**

The Office of the Attorney General (AGO) has been consulted on the general approach to the legislation and the proposed Heads of Bill. There has also been extensive engagement with Euroclear Bank, Euronext Group, the Central Bank of Ireland, financial industry representatives and the legal community regarding the proposed approach.

**7. Enforcement and Compliance.**

There are compliance requirements in relation to the contents of the Circular to be provided to members of participating issuers, and in relation to filings with the Companies Registration Office and the Listing Authority.

**8. Review**

No review process is envisaged for the provisions of the Bill.

**9. Publication**

The Bill and Regulatory Impact Analysis will be published on the Departments' websites following the Bill's introduction into the Oireachtas.