The EBA reminds financial institutions of the need for readiness in view of the Brexit transition period ending on 31 December 2020

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- The transition period agreed between the EU and the UK following the UK withdrawal from the EU on 1 February 2020 will end on 31 December 2020 meaning that EU law will stop to apply in the UK from 1 January 2021. From that date provision of financial services from UK authorised institutions to EU customers on a cross-border basis (passporting) will no longer be possible.
- UK financial institutions offering services to EU customers should (1) ensure they have obtained the necessary authorisations from EU competent authorities and have effectively established themselves before the end of the transition period, and (2) provide adequate information to their EU customers regarding the availability of services after the end of the transition period.
- eIDAS certificates issued to the UK-based account information service providers and payment initiation service providers should be revoked and no longer supported.
- Payment service providers should include additional details regarding the payer and the payee for the transfer of funds between the EU and UK.

The European Banking Authority (EBA) reminds financial institutions affected by the end of the transition period to finalise the full execution of their contingency plans in accordance with the conditions agreed with relevant competent authorities before the end of the transition period on 31 December 2020. The EBA also reminds institutions to ensure adequate communication regarding their preparations and possible changes to any affected EU customers.

Finalisation of preparations and effective establishment in the EU as agreed with relevant competent authorities

In order to continue to provide services in the EU, UK-based financial institutions need to finalise their authorisations from the EU competent authorities and fully establish their EU-based operations in accordance with the conditions and establishment plans agreed with the relevant competent authorities. In particular, financial institutions should ensure that associated management capacity, including appropriate risk management capabilities, is effectively in place in the EU, and is commensurate to the magnitude, scope and complexity of their activities and the risks they generate in their EU operations. Financial institutions are reminded of the need to have clearly articulated and appropriate booking arrangements, to meet the outsourcing requirements as provided in the EBA Guidelines on outsourcing arrangements, and not to outsource activities to such an extent that they operate as ‘empty shell’ companies as also provided in the EBA Opinion on preparations for the withdrawal of the United Kingdom from the EU.

Despite significant action by many financial institutions, and the steps taken by EU public authorities to address financial stability concerns (notably the European Commission’s time-limited equivalence decision to give financial institutions 18 months access to UK central counterparties (CCPs) and call upon them to reduce their exposures to and reliance on those CCPs), even the institutions that have already obtained all necessary authorisations and permissions should remain vigilant. In this regard, financial institutions are also reminded to complete the necessary actions regarding the repapering of contracts with their EU clients.

The EU supervisory authorities continue to pay specific attention to the preparations of payment and electronic money institutions, where many services in the EU have been provided by UK-based institutions on a cross-border basis benefiting from the EU's Single Market passporting arrangements.

In their preparations for the end of the transition period and ramping up of their EU operations, financial institutions should duly comply with all applicable EU legislation and pay particular attention to prudential, consumer protection and AML/CFT requirements.

Payments and payment services

The EBA draws to the attention of market participants that any eIDAS certificate issued to UK-based third party providers under the Payment Services Directive (PSD2) - in particular to account information service providers and payment initiation service providers, or TPPs - for the purpose of identification towards EU-based account servicing payment service providers (ASPSPs) will, as of the end of the transition period on 31 December 2020, no longer meet the legal requirements of Article 34 of the Commission Delegated Regulation (EU) 2018/389, since these providers will no longer have an EU authorisation number and no longer be authorised/registered by a competent authority of an EU Member State.

In that regard, the EBA also calls upon qualified trust service providers in the EU that have issued eIDAS certificates to the UK-based TPPs for the purpose of identification under the aforementioned Delegated Regulation to revoke said certificates at the end of the transition period in order to prevent unauthorised access to customer payment accounts held at EU-based ASPSPs.

Furthermore, the EBA highlights to EU-based payment service providers (PSPs) their obligations under the Regulation (EU) 2015/847 (the Wire Transfer Regulation or 'WTR') and reminds them that, as of the end of the transition period, transfers of funds to/from the UK will be subject to the WTR requirements concerning payments from/to outside the EU.

In particular, under the WTR, PSPs need to provide more detailed information on the payer and the payee for transfers of funds from/to outside the EU, compared to intra-EU transfers where all PSPs involved in the payment chain are established in the EU. This means that, as of the end of the transition period:

- for transfers of funds from the EU to the UK, EU-based PSPs of the payer will need to ensure that these transfers include, in addition to the information regarding the payer's payment account number or a unique transaction identifier, also information on the payer's name and either the payer's address, official personal document number, customer identification number or the date/place of birth (see Article 4(1) of the WTR). The payer's PSP will also need to verify the accuracy of the information obtained (Article 4(4) of the WTR). This is without prejudice to the requirements applicable to PSPs under Regulation (EU) No 260/2012 (the SEPA Regulation);
- for transfers of funds from the UK into the EU, EU-based PSPs of the payee will need to ensure that they have the necessary procedures in place to detect whether the required information on the payer is included in the transfer message, and to implement effective risk-based procedures for determining whether to execute, reject or suspend transfers of funds lacking the complete payer and payee information that is required (Articles 7-8 of the WTR).

The EBA also notes that as of 1 January 2021, the SEPA rules applicable to SEPA credit transfers (SCT) and SEPA direct debits (SDD) from/to non-EEA jurisdictions will become applicable to SCT/SDD transactions with the UK. In this regard, the industry should take note of the statements issued by the European Payment Council.

Communication to customers

The EBA is calling on all financial institutions affected by the end of the transition period, and in particular, those offering financial services to EU-based customers on a cross-border basis and benefiting from the passporting arrangement, to adequately and timely inform their EU-based customers of any actions they are taking as part of their preparations for the end of the transition period affecting the availability and continuity of the services they provide, or whether institutions plan to cease offering services to EU-based customers. Information on the cessation of the services to the EU-based customers should explain the impact of the cessation on the provision of services and the way to exercise customer rights, in order to avoid any detrimental effects for customers.

The EBA also notes that, should EU-based customers have concerns about whether they may be impacted by the end of the transition period, and they have not been contacted by their financial service providers, they may contact financial institutions. Where practically possible, customers, specifically large corporates and institutions, may consider checking with their UK-based financial service providers to confirm whether they have obtained all necessary authorisations from EU competent authorities to continue to providing services to EU-based customers after the end of the transition period.

Financial institutions' customers are also invited to consult the websites of their national competent authorities for communications and guidance about the UK withdrawal from the EU and its impact on the provision of financial services in specific jurisdictions.

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