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Brexit and prepaid products: outcomes and opportunities

The UK's exit from the EU seems likely to lead to the loss of passporting rights for the UK's e-money firms, if the UK Government's current route of a hard Brexit is ultimately the one travelled. For the UK's prepaid product sector, this will have a significant effect, and such firms may now be considering whether to establish subsidiaries in remaining EU Member States in order to continue to passport into the EU after Brexit. The Emerging Payments Association and the Prepaid International Forum are continuing to lobby to preserve passporting for UK firms but have also conducted research into options should a hard Brexit become reality. Robert Courtneidge, Global Head of Cards & Payments at Locke Lord LLP and founder of the Prepaid International Forum, discusses here the research's findings and the options for prepaid firms.

With well over 100 e-money businesses regulated in the UK and over £10 billion in e-money issued and safeguarded in the UK, the prepaid product market is no longer a small sector of UK payments. So, how much of this e-money and how many of these businesses will need to move to another EU country when the UK leaves the EU to enable them to continue issuing e-money in the EU but outside the UK? Equally, how many of the e-money businesses registered in the EU outside the UK but passported into the UK for the provision of payment services and e-money issuing will need to get licensed in the UK to continue to offer their services in the UK? As the Governor of the Bank of England said, Brexit "is more likely to affect Europe than the UK. It will affect the UK as well, but in my view it is a greater risk for Europe." Furthermore, Mark Yeandle, Associate Director at the Z/Yen Group and the author of the Global Financial Centres Index ('GFCI'), said: "We live in uncertain times and financial professionals hate uncertainty. Brexit has caused uncertainty in Europe and the election of Donald Trump has caused uncertainty globally." The 21st GFCI, an index which rates 88 global financial centres, has been released, and shows the impact that Brexit and the US election have had on the UK and US as financial hubs. Notwithstanding this, London and New York are still ranked

one and two in the world respectively and are still a significant way ahead of the following group from the Far East of Singapore, Hong Kong and Tokyo.

So what is going to change and what can the UK payments industry do to ensure its longevity and world standing?

The key benefit of EU membership for the UK electronic money issuers ('EMIs') is that they are able to offer services in any other EU state under the passporting rights given to them under the Electronic Money Directive 2009 ('EMD2') (Art 8) as implemented into the UK by the Electronic Money Regulations 2011 ('EMR') (regs 28-31). Therefore, whilst UK EMIs conduct the majority of their business in the UK, there are a significant proportion that carry it on cross border too.

No country has ever left the EU before. By the Treaty of Lisbon, which became law in December 2009, Article 50 gave EU members the right to leave the EU. On 29 March 2017, following a Commons debate that saw MPs giving their majority backing to the Prime Minister to start withdrawal talks on her terms by 494 votes to 122, the UK Government officially triggered Article 50 and the UK should therefore officially leave the EU no later than April 2019. In some respects, this removes some

of the uncertainty, as the UK has more direction than before on the shape Brexit will take. But the reality is that there are still a number of variables and possible outcomes, all of which will impact the future of the UK, meaning the outlook is still very much uncertain overall.

If, as is anticipated by the majority of commentators, the UK Government pushes for a hard Brexit, there is no doubt that the UK will not retain any rights to passporting and UK EMIs will need to find alternative ways to operate their businesses across the EU. Indeed, following the initial motion of the European Parliament setting out the guidelines for negotiation of Brexit on 3 April 2017, it is clear that there will be no lenience given to the UK, and in anticipation UK EMIs are already making plans to deal with this. Both the Emerging Payments Association ('EPA') and the Prepaid International Forum ('PIF') are looking into solutions for their members whilst continuing to lobby at UK and EU level to preserve passporting.

The EPA has already prepared a report entitled 'Post-Brexit Options for FinTech growth beyond 2019³,' which takes a look at countries it believes are most user-friendly and have international credibility for UK EMIs to set up subsidiaries. Some of the key factors considered were:



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- relationship of the regulator and the firms;
- how many licences have already been granted;
- reputational strength of the country's banking systems;
- risk management and reporting requirements;
- passporting regime and how passport friendly they are;
- home state AML and consumer regulation, as this will bind any business using that state as its home;
- ease/difficulty of establishing in the country (set up costs/direct and indirect taxation/reporting etc.); and
- ability to open bank and safeguarding accounts in the country.

On this basis six countries were selected for a deep dive into these areas and the outputs were reported. The countries selected were Cyprus, Denmark, Ireland, Luxembourg, Malta and Sweden, and there is ongoing work looking at these countries and meeting their regulators to see what solutions may be possible.

Separately, the International Regulatory Strategy Group ('IRSG'²⁴) has recently begun to look at the consequences of Brexit across the wider banking community and has published two reports looking at the possibility of some form of EU-UK agreement being

put in place. On 23 January 2017 IRSG published its report on 'Third Country Regimes and Alternatives to Prosperity,' which concluded that a bespoke agreement with mutual rights of access would be the preferred model. By point of reference the other two alternatives if a bespoke agreement is not accepted are:

1. relying on EU Third Country Regimes rules which mean the UK would have to just accept all new and existing EU laws whilst having no input in them - not an acceptable option; or
2. 'No deal': as Theresa May stated "no deal is better than a bad deal," but it would necessarily lose all our passporting rights and mean any future rights for UK regulated financial businesses to work in the EU would require bi-lateral agreements on a country by country basis, which would not be a good position.

The IRSG's second report titled 'Mutual Recognition - A Basis for Market Access after Brexit' goes on to look in detail at what mutual recognition would look like and the key areas needed to be covered in a bespoke agreement. It covers the criteria for access, the mechanisms for assessing and maintaining regulatory alignment and importantly what kind of dispute resolution could be built into it. It specifically refers back to the

UK's Article 50 letter dated 29 March 2017 stating the UK proposals would be for: 'a bold and ambitious Free Trade Agreement between the United Kingdom and the European Union [...].'

Whilst this is clearly what the UK wants, based on the initial indication from the guidelines being set for the negotiation from the European Parliament referred to earlier, I believe that at the end of the two years we will still be at a 'no deal' situation. As such, the more practical options being proposed by the EPA will be needed (even if this is just for the period from Brexit until formal trade agreements come into place).

Clearly none of this is good for the prepaid industry, which is still in its infancy and in a growth phase. It provides employment as well as competitive solutions for consumers and businesses alike in the payments sector, driving down costs and increasing efficiency and utility. It would be a tragedy for this to be lost and so a solution is not just a 'nice to have,' it is a 'must have'!

1. www.emergingpayments.org
2. www.prepaidforum.com
3. <http://emergingpayments.org/portfolio/project-europe/>
4. www.irsg.co.uk