



Please note: This letter has been prepared for the website. Square brackets show where this letter may differ slightly from the versions sent directly to firms.

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Dear [CEO / Branch Manager],

Final preparations for the end of the transition period

The transition period, which began when the UK left the EU on Friday 31 January 2020, is due to end at 11pm on Thursday 31 December 2020. It is imperative that firms continue to build on their preparatory work to ensure that they, and to the extent possible their clients, are ready for a range of scenarios at the end of the transition period.

As noted by the Financial Policy Committee (FPC) in its statement on Thursday 8 October 2020, most risks to UK financial stability that could arise from disruption to the provision of cross-border financial services, should the transition period end without the UK and EU agreeing equivalence or other arrangements for financial services, have been mitigated.¹ This reflects the extensive preparations made by authorities and the private sector over a number of years.

UK authorities have put temporary measures in place to ensure that UK households and businesses will be able to continue accessing services from EU financial institutions after 2020. These measures include the Temporary Permissions Regime (TPR), and the use of temporary transitional powers, on which the Bank of England (Bank), Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) have published information.² UK firms have developed strategies and established EU entities where appropriate, and continue to on-board clients as EU entities are built out.

However, financial stability is not the same as market stability and some market volatility and disruption to financial services, particularly to EU-based clients, could arise. Financial institutions are continuing to make preparations and engage with clients and customers to minimise any disruption and it is important that they continue to do so. Final steps by individual firms are required to ensure their preparedness for the end of the transition period. These actions will vary between firms, and may differ between UK-incorporated subsidiaries and branches of overseas firms. The list below, which is not in order of priority, sets out the key areas.

Continuity of wholesale banking business and contracts

¹ Financial Policy Summary and Record of the Financial Policy Committee Meeting on Wednesday 30 September 2020. Available at: <https://www.bankofengland.co.uk/financial-policy-summary-and-record/2020/october-2020>.

² Available at: <https://www.bankofengland.co.uk/eu-withdrawal/temporary-transitional-power> and <https://www.fca.org.uk/brexit/onshoring-temporary-transitional-power-ttp>.

Firms are well-advanced in building up the capacity of their EU entities. As noted by the FPC, on average, over two thirds of clients, including larger clients which represent a greater share of activity, of major UK-based banks have now completed the necessary documentation to enter into derivative trades with EU entities.

The number of clients actively trading in new EU entities varies across firms. Some operational risks remain, including if many clients seek to migrate new business or existing contracts to EU entities in a short period of time towards the end of the transition period. These actions could also amplify any existing market volatility.

Where necessary, you should continue to take steps to facilitate the continuity of business and contracts. You should proactively engage with affected clients to complete repapering and on-boarding, and novate existing trades where necessary to ensure clients can manage risks related to lifecycle events. In line with the FCA's letter of Wednesday 12 September 2018, you should ensure that you have fully considered the impact on each client and whether the proposed changes, including any transfer of business if applicable, are in each client's best interests. And, where you plan to use national licensing regimes and exemptions in EU Member States, you should ensure that you will have everything in place by the end of the transition period to comply with requirements in those Member States.

Data

In the absence of a decision by the European Commission on UK data protection adequacy, the use of standard contractual clauses (SCCs) in relevant contracts is one of the available ways that EEA firms can comply with the EU's cross-border personal data transfer laws after the expiry of the transition period.

UK firms are generally well-advanced on their part in making arrangements for the implementation of these clauses into UK-EEA contracts. You may need to consider whether contracts involving the transfer of personal data to your firm from the EEA (where those contracts have not yet been remediated) need to be updated to comply with EU requirements or to consider other appropriate measures for personal data transfers from the EEA into your firm in the UK, where this is necessary to ensure the continuity of services to your firm. This could include reviewing the position for EU vendors or third parties on which your services rely.

Where SCCs are in place please note the advice from the European Data Protection Board and the UK's Information Commissioner's Office, and applicable EU case law.³

Trading venues

If you are currently subject to the share and/or derivatives trading obligation, you should consider how you will continue to meet your trading obligations in both the EU and UK under a range of scenarios at the end of the transition period, and the implications for your clients. You should discuss your plans and assumptions with the FCA, in particular if you plan to make any changes to your current systems and processes.

Payments

The UK will retain access to Single European Payment Area (SEPA) schemes after the end of the transition period, subject to its continued compliance with the established participation criteria. Processing payments, including direct debits, through SEPA schemes after the transition period will require additional information to be included about the debtor in the payment instructions.

You should continue to take all reasonable steps to avoid disruption to payments. This includes by ensuring that the required information is included on SEPA payments where necessary, and that customers are aware of the need to provide the information. In the event that any payments are disrupted,

³ Available at: https://edpb.europa.eu/sites/edpb/files/files/file1/20200724_edpb_faqoncjeuc31118_en.pdf and <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2020/07/updated-ico-statement-on-the-judgment-of-the-european-court-of-justice-in-the-schrems-ii-case/>.

firms should ensure they are ready to communicate promptly with impacted customers to alert them to this and to give them the opportunity to make the payment in an alternative way.

Provision of retail banking services

UK banks' continued actions to prepare their EU subsidiaries will enable their provision of services to many EU customers after the end of the transition period. However, the ability of UK banks to continue providing some services to customers – particularly retail customers – resident in the EU will be determined by national regimes. The scope and availability of national regimes is decided by individual EU member states. Depending on the national regime in place, the ability of UK banks to provide certain services to EU-based customers may be impaired.

If you have customers in the EEA, you should have plans in place on your approach to servicing your existing contracts with them. When implementing these plans, you should take steps to ensure you act in accordance with local law and national regulators' expectations. Firms' decisions should be guided by what is the right outcome for their customers and provide timely communications to enable them to make appropriate decisions and take necessary steps. In many cases, it would be a poor outcome for the customer for you to suddenly stop servicing them.

If you have identified customers who will be affected by a reduction or cessation in service provision, you should ensure that they are treated fairly and provide them sufficient notice to seek alternative arrangements in an orderly manner. You should also continue to take the necessary steps to manage any remaining operational risks.

Other areas of focus for firms

The FPC has been reporting regularly on progress in the above areas. It is not an exhaustive list of all the issues that may arise, and we are aware that you are also working on other matters linked to the end of the transition period (for example, changes to reporting requirements, operational continuity of services including when provided by a third-party supplier, safeguarding of client money and custody assets and communications to customers).⁴ You should continue to take steps to address risks specific to your firm and keep your supervisors informed.

EEA passporting firms

Upon entry into the TPR at the end of the transition period, EEA passporting firms will obtain temporary deemed permissions to operate in the UK pending permanent authorisation as Third Country Branches (TCBs). The PRA wrote to the relevant firms on Tuesday 1 September 2020 to remind them of the need to ensure operational preparedness to meet the regulatory requirements that will apply once firms enter into TPR.⁵ Whilst in the TPR, firms will be subject to the same obligations and supervisory framework, and we will have the same powers in relation to them, as if they were a Part 4A authorised firm. The PRA's expectations are set out at a high level in the PRA's Approach to Banking Supervision and the PRA's Supervisory Statement for International Banks (SS1/18).⁶ In particular, the PRA places emphasis on ensuring a high degree of supervisory cooperation with home state supervisors and appropriate access to group information, where relevant. The FCA has set out information for firms using TPR on its website.⁷ This includes information on the rules which will apply to firms in the TPR and considerations for firms leaving the TPR. The FCA is currently consulting on its approach to the authorisation and supervision of international firms in CP20/20 (which is relevant to firms from both EEA and non-EEA jurisdictions).⁸ This will supplement our existing Approach to Authorisation and Approach to Supervision documents.⁹ For dual

⁴ Available at: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards> and <https://www.fca.org.uk/firms/preparing-for-brexit>.

⁵ September 2020: <https://www.bankofengland.co.uk/prudential-regulation/letter/2020/tpr-operational-readiness>.

⁶ October 2018: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/pr-a-approach-documents-2018>; and March 2018: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss118>.

⁷ Available at: <https://www.fca.org.uk/brexit/temporary-permissions-regime-tpr>.

⁸ Available at: <https://www.fca.org.uk/publication/consultation/cp-20-20.pdf>.

⁹ Available at: <https://www.fca.org.uk/publications/corporate-documents/our-approach-authorisation> and <https://www.fca.org.uk/publications/corporate-documents/our-approach-supervision>.

regulated firms, it will sit alongside SS1/18. PRA and FCA supervision teams will also continue to work closely with firms regarding their applications for permanent authorisation. In addition, the financial services contracts regime (FSCR) will enable EEA passporting firms that do not enter the TPR to wind down their UK business in an orderly fashion.¹⁰

Both the Bank/PRA and the FCA have set out extensive information on our websites about the issues firms need to consider.¹¹ You should ensure that you are familiar with that material.

Thank you for your firm's constructive engagement on these issues to date. We look forward to this dialogue continuing in supervisory engagement over the coming weeks.

Yours sincerely

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¹⁰ Available at: <https://www.bankofengland.co.uk/eu-withdrawal/financial-services-contracts-regime> and <https://www.fca.org.uk/brexit/temporary-permissions-regime-tpr/financial-services-contracts-regime>.

¹¹ Available at: <https://www.bankofengland.co.uk/eu-withdrawal> and <https://www.fca.org.uk/brexit>.