The Bank's regulatory and supervisory approach on EU Withdrawal

BSA response to four CPs issued on 25 October 2018

January 2019

Building Societies Association

Introduction

This response addresses the group of four consultation papers published by the Bank / PRA on 25 October 2018, concerning various aspects of the Bank's / PRA's regulatory and supervisory approach on EU Withdrawal. The BSA mainly addresses CPs 25/18 and 26/18. We have not identified matters relevant to our members in the other two CPs on resolution and FMIs respectively. If necessary we will respond separately to the further proposals in CP 32/18 published on 20 December.

General comments

We agree broadly with the general approach described in chapter 3 of the main CP 25/18. We also note in particular the repeated assurances given *inter alia* at paragraph 1.4 of the main CP that **the changes do not reflect any other change in Bank or PRA policy** (apart from Brexit) and we (and our members) will of course be relying on this.

Paragraph 1.12 of the main CP makes the general point that, at this stage, the Bank and PRA do not propose to make the detailed consequential amendments to their existing SSs, SoPs or reporting forms. Instead, there are to be new SoPs and SSs (consulted on in the 25 October package) that explain how the existing material should be interpreted in light of Brexit. We agree that making those detailed amendments is not a priority for the time being, and would not be a good use of Bank / PRA resources, especially given the uncertainty as to the point in time at which those amendments would take effect. Firms can, in the short-term, gloss the underlying rules / guidance as proposed, and "get by". But as Brexit will in this way increase the fragmentation and opaqueness of UK regulatory material, **in the longer term, the Bank / PRA should take steps to produce authoritative consolidations of such material** so that applicable rules and guidance can all be found in one place.

Temporary transitional power

We also support the proposed use of the temporary transitional power in the few instances of relevance to building societies and credit unions, in particular :

- **Building societies** would continue to treat EU27 exposures and assets preferentially, under the applicable capital frameworks, and under the CRR liquidity and large exposure regimes;

- **Building societies** would continue to report and disclose regulatory data on the same basis as before exit day;

- **Credit unions** could continue to place deposits with EEA credit institutions.

EU Guidelines (chapter 5 of main CP)

There is at first sight an apparent inconsistency here. The Treasury has stated that the Regulations establishing the ESAs and providing the basis for their functions, including the power to issue guidelines etc, which would otherwise become "retained UK law", are to be revoked in their entirety – and as the existing Guidelines are not to be saved, they will cease to have any legal effect in the UK. The Bank is now saying that it expects firms to continue to observe these Guidelines regardless (but will not make the resulting amendments to the Guidelines themselves).

We deduce the reason for this is that if the Guidelines had been saved under the EUWA, it would have been necessary to make the detailed amendments to cure the technical defects, which would not have been a good use of resources.

In the short term, this is in practice not objectionable, as firms are already presumed to be complying. But over time, the unsatisfactory situation of having applicable regulation spread over numerous locations, and comprising defective legacy texts, should be addressed – as we urge above – by an authoritative consolidation exercise.

We comment also on paragraph 5.7, regarding changes to EU Guidelines, or new Guidelines. Clearly these will not automatically apply to the UK, and if the Bank chooses to apply similar standards in future (as it says it may) this should only be done after full UK consultation including cost-benefit analysis – bearing in mind that the UK will not be involved in any future consultations by any of the ESAs.

FSCS protection (chapter 8 of CP 26/18)

There is one item in the chapter 8 FSCS proposals that is of peripheral relevance to some of our members. None of our members currently take deposits through establishments elsewhere in the EEA (apart from Gibraltar, which is addressed separately in CP 32/18 issued on 20 December). But some of our members may probably have a few depositors currently resident in the EEA. These would be either depositors who have proactively (by way of “reverse solicitation”) opened deposits with a building society from their current residence - remotely via a website etc, or depositors formerly resident in the UK who have moved abroad. Our understanding is that in all such cases, the deposits are treated as held at the society’s UK establishment. Therefore the deposits will remain covered by the FSCS, the proposals in paragraphs 8.21-8.22 and 8.32 would not apply, and it will not be necessary for societies to make any notification of the kind envisaged in paragraph 8.32. For reassurance, societies might wish to communicate with these depositors to reaffirm that, in spite of Brexit, they remain covered by the FSCS, but that will be a voluntary matter.

We also take this opportunity to remind the PRA that Brexit will inter alia allow the restoration of FSCS cover for the deposits by credit unions with banks and building societies, as it existed prior to the implementation of the amended DGSD. As PRA itself admitted, that change was solely driven by the DGSD amendments, so there will after Brexit no longer be any policy reason not –in due course-to restore the *status quo ante*.

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The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £387 billion, and account for 22% of the UK mortgage market and 18% of the UK savings market.