

Focus Team Capital Markets



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Brexit update: Italy converts into law the Brexit Decree

On 20 March 2019, the Italian Council of Ministers approved the Law Decree No. 22 of 25 March 2019, which came into force on 26 March 2019 (the “**Brexit Decree**”), introducing urgent measures in order to manage the potential effects of a “no-deal” Brexit scenario on the activities of UK banks, investment firms, e-money and payment service institutions, insurance companies, insurance and reinsurance intermediaries operating in Italy.¹

On 11 April 2019 the European Council granted an extension of the deadline for the UK’s exit from the EU as long as necessary and until no later than **31 October 2019**, in order to allow for the ratification of a withdrawal agreement by the UK Parliament.

Brexit Decree has been converted into law (with certain amendments) by Law No. 41 of 20 May 2019, which came into force on 25 May 2019 (“**Brexit Law**”).

The Brexit Law establishes a transitional period of **18 months** (subject to certain qualifications and restrictions) (the “**Transitional Period**”), starting from the date of withdrawal of the UK from the EU (the “**Withdrawal Date**”), during which continuity of certain banking and financial activities is guaranteed.

With respect to financial institutions, the ability to rely on the Transitional Period is subject to (i) the delivery of a prior notice to be sent at least 3 business days before the Withdrawal Date to the relevant Italian authorities, according to the guidelines and rules to be provided by such authorities (the “**Notice**”); and (b) the filing of an application for a third country local authorisation within 6 months of the Withdrawal Date (the “**Application**”) by the relevant UK entity.²

¹ Please refer to our Brexit Alert of March 2019, available [here](#).

² Please note that the Bank of Italy has published guidelines in English in relation to the Brexit Decree, also containing the notification forms which must be duly transmitted by the banks and other financial intermediaries to the Bank of Italy in order to benefit from the Transitional Period. Likewise, CONSOB has published a set of requirements, also in English, for UK intermediaries who provide investment services and activities in Italy. Link [here](#) to the relevant guidelines published by CONSOB as to financial intermediaries, and [here](#) to those published by the Bank of Italy as to UK banks, e-money institutions, payment institutions and asset managers doing business in Italy.

Below is a summary of the key provisions of the Brexit Law regarding the urgent measures that will apply in case of a no deal Brexit.

Entities allowed to operate in Italy

Subject to the delivering of the Notice and the filing of the Application:

- (a) **UK banks** will be allowed to continue to carry out banking activities in Italy throughout the Transitional Period. However, with respect to the deposit activity, UK banks acting on a cross-border basis (*in regime libera prestazione di servizi*) will be allowed to maintain clients onboarded before the Withdrawal Date, but **will not be permitted to accept any new deposits**. Subject to the delivery of the Notice and the filing of the Application, UK banks acting on a cross-border basis will be allowed to perform lending activities for the duration of the Transitional Period.
- (b) **UK banks, investment firms and e-money institutions providing investment services** (or payment services, as the case may be) through local branches, will be able to **continue** to provide such services throughout the Transitional Period.
- (c) **UK banks and investment firms providing investment services on a cross border basis** will **continue rendering** the same services in Italy, exclusively towards eligible counterparties and professional clients.
- (d) **UK participants admitted to Italian trading venues** as of the Withdrawal Date will be permitted to **retain their status** as market participants throughout the Transitional Period provided that, before the Withdrawal Date, the relevant request by the Italian operator of trading venues has been submitted.

Please note that should the relevant UK entity fail to serve the Notice or file the Application by the relevant deadline, it will be compelled to **manage the existing contracts, with a view to transfer or terminate such contracts** respectively, within:

- (i) 6 months from the Withdrawal Date, in the case of failure to serve the Notice; and
- (ii) 6 months from the end of the period allowed for the filing of the Application, in the case of delivery of the Notice, but failure to file the Application.

Entities no longer allowed to operate in Italy

- (a) **UK asset managers, investment funds, payment institutions and e-money institutions acting on a cross-border basis** (also through agents), as well as **banks and investment firms providing investment services to retail clients** and elective professional clients on a cross border basis will **no longer be able** to operate in Italy and will have to interrupt their business by the Withdrawal Date. However, such entities will benefit from a 6-month “grace period” to manage the existing contracts, with a view to transfer or terminate such contracts. Additionally, within 15 days from the Withdrawal Date, such entities will be required to notify their clients of the terms and condition of the transfer or termination of their existing contracts.
- (b) **UK insurance companies operating in Italy on a cross border basis** or through a branch as of the Withdrawal Date, will only be permitted to continue contractual relationships **outstanding** as of the Withdrawal Date. Within 90 days of the Withdrawal Date, a plan concerning the management of existing contracts shall be submitted and agreed with the Italian insurance regulator (IVASS), which will inform the public of such temporary management. Without prejudice to the policy holder’s right to terminate the insurance contract, throughout the Provisional Period, the insurance companies will be allowed to manage the existing contractual relationships, without entering into new contracts or renewing the existing contracts.³ Please note that the draft of the Brexit Law does not make any reference to reinsurance companies.
- (c) **UK insurance and reinsurance intermediaries carrying out insurance distribution** activities in Italy on a cross border basis or through a branch as of the Withdrawal Date will **cease** their activity by the Withdrawal Date. All transactions which are necessary for the transfer or termination of the outstanding contractual relationships shall be carried out as quickly as possible, and in any case no later than six months from the Withdrawal

³ The Brexit Law is however unclear with regard to the measures applicable to the insurance contracts entered into before the Withdrawal Date and which will be still outstanding at the end of the Transitional Period.

Date. Within this 6-month period, such UK insurance and reinsurance intermediaries shall not carry out any insurance distribution activity or renew any existing contract.

Over-the-counter (“OTC”) derivatives

During the Transitional Period, in respect of uncleared **OTC derivatives outstanding** as at the Withdrawal Date and without prejudice to the regime of the investment services, it will be possible for banks and investment firms acting on a cross-border basis to manage life cycle events (also in respect of derivatives entered into with Italian regions and local public authorities) – even if this activity will require the entering into of **new contracts** – up until the European Commission makes a decision pursuant to art. 47(1) of Regulation (EU) n. 600/2014 (i.e. third-country equivalence decision) and anyway not later than the end of the Transitional Period, provided that the Notification and the Application have been filed.

Indeed, please note that UK banks and investment firms will be required to **serve the Notice and file the Application**. Should they not comply with such obligations, they will still benefit from a 6-month “grace period” for managing life cycle events (including entering into new contracts if required for such purpose), which shall last for:

- (i) 6 months from the Withdrawal Date, in the case of failure to serve the Notice; and
- (ii) 6 months from the end of the period allowed for the filing of the Application, in the case of delivery of the Notice, but failure to file the Application.

Italian-regulated entities operating in the UK

Without prejudice to the applicable UK rules and regulations, certain Italian entities operating in the UK will be able to **continue** to carry out their activities:

- (i) throughout the Transitional Period, subject to the delivering of a **notice** to the relevant Italian authorities at least three business days before the Withdrawal Date, and

- (ii) beyond the Transitional Period, subject to the **filing** of an application to the relevant Italian authorities at least twelve months before the end of the Transitional Period.

In particular, such entities include banks, investment firms, payment and e-money institutions, SGRs, SICAVs, SICAFs, financial intermediaries and managers of EuVECA, EuSEF and ELTIF funds.

The above listed entities that have already applied to the competent Italian authorities as at the Withdrawal Date will not be subject to the requirements under this section paragraph (i) and (ii) above.

Also, trading venues that wish to continue operating in the UK and granting access to traders established in the UK (as at the Withdrawal Date) during the Transitional Period must apply for an extension of their business in the UK by the Withdrawal Date, subject to applicable Italian law and in accordance with the provisions laid down in the UK.

Insurers that wish to continue operating in the UK after the Withdrawal Date may do so if in compliance with Italian and UK applicable law.

Additional Provisions

- (a) **Deposits:** UK bank with Italian branches shall automatically join the Italian protection system for depositors and shall give notice to their depositors.
- (b) **Pensions Funds:** During the Transitional Period, for the purposes of complying with the provisions of the Decree of the Ministry of Economy and Finance No 166 of 2 September 2014, the investments in units or shares of UK UCITS and UK AIFs held on 26 March 2019 by pension funds shall be treated equally to those in EU UCITS and EU AIFs respectively.
- (c) **Taxation:** Italian tax rules that apply based on the UK being an EU member state – including those endorsing an EU directive – will continue to apply until the end of the Transitional Period. Rules on VAT and excise duties deriving from the transposition of EU directives and regulations will continue to apply to the extent they are compatible with the new legal landscape. The Ministry of Economy and Finance will issue one or more decrees containing the implementing measures, provided that there will be no additional burden on the public finances. This means that UK entities will benefit

from the withholding tax exemption on interest payments under medium-long term loans, granted to Italian borrowers throughout the Transitional Period.

- (d) **GACS extension:** The GACS (i.e. the state guarantee scheme for NPL securitisations), originally provided until 6 March 2019, has been extended for a further period of two years and for a total amount of Euro 100 million.

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