

Italy issues Law Decree regarding UK financial services intermediaries in the case of a "No-deal" Brexit

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Executive summary

The risks of a non-negotiated detachment of the United Kingdom (UK) from the European Union (EU) has prompted action from the Italian legislature designed to protect the markets, mitigate the perceived risks, and provide a clear roadmap of what lies ahead for banking, financial and insurance undertakings affected by Brexit.

Consequently, the Italian Government recently issued Law Decree no. 22/2019 addressing the scenario of a no-deal Brexit (the Decree), which was published in the *Official Gazette* on 25 March 2019; the Decree entered into force on 26 March 2019 and provides for a transitional period of 18 months. The provisions of the Decree will apply both to UK entities providing regulated activities in Italy under the EU freedom of establishment or the freedom to provide services regime as well as to Italian entities operating in the UK.

This Alert focuses exclusively on the main aspects of the Decree pertaining to the former scenario.

Detailed discussion

The Decree does not provide any binding date for Brexit but rather addresses the concept of “Exit Date” (*data di recesso*) which is defined as the date on which the UK will definitively exit the EU without a deal pursuant to art. 50 of the Lisbon Treaty. Closely related to the Exit Date is the “Grace Period” (*Periodo Transitorio*) which is defined as the 18 months following the Exit Date, which is the period in which the provisions set forth in the Decree will apply.

The Decree structures the relevant applicable provision depending on:

- (i) The type of entity (e.g., banks, insurance undertakings, investment firms)
- (ii) The way the entity provides services in Italy (i.e., under the freedom to provide services regime or the freedom of establishment)
- (iii) The categories of clients the reserved activities are provided to (this aspect is taken into account with respect to investment services)
- (iv) The services provided (for banks a distinction is set forth with regard to financing and collection of savings)

Intermediaries that intend to avail themselves of the Grace Period shall make a notification to the relevant Italian competent Authority (Bank of Italy, Consob or IVASS) no later than three business days before the Exit Date, in accordance with the procedures established by the competent authorities (the Notification).

During the grace period, intermediaries are subject to the existing Italian law and regulation. Similarly, they remain subject to the supervisory of the Italian competent Authorities.

Banks

- **UK banks operating in Italy under the freedom to provide services regime as well under the freedom of establishment** providing activities subject to mutual recognition, may keep providing such services during the Grace Period provided that they make Notification to the Bank of Italy, except for what is outlined below.
- **UK banks collecting savings under the freedom to provide services regime**, following Notification to the Bank of Italy, shall limit such activity to the management of the relationships established prior to the Exit Date.

The conclusion of new contracts or the tacitly renewing of existing ones is forbidden.

Investment firms

- **UK banks and broker dealers providing investment services under the freedom to provide services regime** may continue to carry out the same activities in Italy only with regard to **eligible counterparties and per se professional clients**, provided that they make the required Notification. With regard to Over-The-Counter derivatives, they shall limit their activities to the management of the events in their life cycle in force at the Exit Date.
- **UK banks and investment firms providing investment services under the freedom of establishment** during the Grace Period may keep providing in Italy the same activities, provided that they make the required Notification.

E-money institutions

- UK electronic money institutions operating in Italy through a branch may, during the Grace Period, continue to conduct business provided that they make the required Notification.

Insurance undertakings

- On the Exit Date, a UK insurance undertaking operating in Italy under the freedom of establishment or the freedom to provide services regime are removed from the relevant lists held by IVASS (the Italian insurance supervisory Authority). During the Grace Period such entities shall limit their business to the management of existing contracts and coverages. Entering into new contracts or renewing them, even tacitly, is forbidden.
- Within 90 days from the entry into force of the Decree, UK insurance undertakings shall **submit to IVASS a plan** showing the regular and quick execution of the contracts and coverages, including the payment of claims in force at the time of the Exit Date. In the case of non-compliance within the end of the Grace Period, an extension may be eventually granted by IVASS when certain conditions are met.
- Within 15 days from the Exit Date, companies shall **inform**, through their website, policyholders, insured persons and other persons entitled to insurance benefits of the operating regime applicable to them. Insurance undertakings shall provide, before the Exit Date, such communication even if they have already provided it by other means as required by the competent Authorities.

- From the Exit Date, the policyholder may withdraw from contracts with a duration of more than one year with no charge and tacit renewal clauses have no effect. The contracting party's withdrawal shall take effect from the expiry of the first year following such withdrawal.

Insurance intermediaries

- UK insurance or reinsurance intermediaries who, at the Exit Date, carry on the activity of insurance or reinsurance distribution in Italy under the freedom of establishment or the freedom to provide services regime, shall cease such activity by that date and shall be removed from relevant registers held by IVASS.
- In order to avoid any prejudice to policyholders, insured persons and other persons entitled to insurance benefits, the operations necessary for the orderly closure of existing distribution relationships shall be unaffected as soon as possible and in any event no later than six months after the date of withdrawal. Within this six-month period, such persons may not engage in new distribution activities or even tacitly renew existing distribution relationships.
- Within 15 days from the date of withdrawal, the intermediaries shall inform, also by means of communication on their own website, policyholders, insured persons and other persons entitled to insurance benefits of the operating regime applicable to them. Intermediaries shall carry out this communication even if they have complied with the information required by the relevant authorities before the date of withdrawal.

UK intermediaries that shall cease their business in Italy

- UK payment institutions
- UK collective asset managers
- UK collective investment schemes
- UK electronic money institutions in the freedom to provide services regime (also those operating with agents)
- UK banks and investment firms providing investment services in the freedom to provide services regime to retail clients and professional clients upon request

In order to avoid any possible prejudice to customers, the activities necessary for the orderly closure (to be completed as soon as possible, and in any case no later than six months from the Exit Date) of existing relationships may be performed in compliance with the applicable termination period of the contracts.

Within the aforesaid six-month period, these parties shall continue the activities carried out prior to the Exit Date, limited to the management of the relationships existing at the Exit Date, without the possibility of concluding new contracts or tacitly renewing existing ones.

Within 15 days from the date of entry into force of the Decree such intermediaries shall inform customers, service providers and the competent Authorities of the initiatives taken to ensure the orderly termination of business.

Implications

The main aspects that intermediaries should take into account are:

- Submission of the Notification to the Italian competent Authorities
- Management of the relationships (including the relevant communications) with existing Italian clients at the time of the Exit Date
- Assessment of the specific provisions set forth for specific intermediaries (e.g., the plan to be sent to IVASS for insurance undertakings)
- After the Grace Period, intermediaries shall submit to the competent Authorities, within a maximum period of six months from the date of commencement of such period, the application provided for the authorization to carry out the related activities or for the establishment of an Italian intermediary

Bank of Italy, Consob and IVASS are currently publishing specific communications concerning the implementation of the Decree.

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