

Italy Readies Measures for a No-Deal Brexit

January 2019

On January 24, 2019 the Italian Ministry of Economy and Finance ("MEF") published a press release announcing that the Italian government has readied a set of measures necessary to ensure full continuity for financial markets should the United Kingdom leave the European Union without a deal.

Background

In a no-deal Brexit scenario, the United Kingdom would become a third country to all intents and purposes under EU law starting from March 30, 2019. This would have disruptive effects on the services rendered by UK financial institutions currently operating in Italy under EU passporting rules and on investment and financial activities carried out by Italian firms on a cross-border basis in the UK.

For example, UK banks, insurance companies, asset managers or investment firms operating in Italy under the freedom to provide services or through local branches would no longer be allowed to carry out their business in Italy without an authorization by the competent authorities, and UK firms' access to trading venues might be discontinued.

Proposed Measures

The proposed measures aim to ensure financial stability and business continuity, as well as to safeguard depositors and investors by introducing a transition period during which UK and Italian financial services firms may continue to operate without disruption (the "**Transition Period**"). According to the MEF press release, the Transition Period should be similar to that provided in the draft withdrawal agreement between the United Kingdom and the European Union published in November 2018.

Paul Alexander

Local Partner, Milan

T +39 02 00688 334

paul.alexander@whitecase.com

Iacopo Canino

Partner, Milan

T +39 02 00688 340

icanino@whitecase.com

Gianluca Fanti

Partner, Milan

T +39 02 00688 390

gianluca.fanti@whitecase.com

Ferigo Foscari

Partner, Milan

T +39 02 00688 320

ffoscari@whitecase.com

Leonardo Graffi

Partner, Milan

T +39 02 00688 370

leonardo.graffi@whitecase.com

Michael Immordino

Partner, London, Milan

T +44 20 7532 1399

+39 020 068 8310

mimmordino@whitecase.com

Alessandro Nolet

Partner, Milan

T +39 02 00688420

alessandro.nolet@whitecase.com

Tommaso Tosi

Partner, Milan

T +39 02 00688 430

tomaso.tosi@whitecase.com

Veronica Pinotti

Partner, Milan

T +39 02 00688 410

veronica.pinotti@whitecase.com

It may accordingly be expected that the Transition Period will last at least until the end of 2020, although this is not specified in the press release.

During the Transition Period it will be possible for financial institutions to continue to carry out their business under the current regulatory framework. This regime will apply both to UK entities operating in Italy and to Italian entities operating in the UK – as far as the Italian rules are concerned in this latter case.

With regard to trading venues, the new rules would also envisage the application of a Transition Period during which current operations may continue in accordance with the relevant EU regulatory framework. Specific provisions will be enacted in respect of Italian pension funds, allowing them to continue their investments in collective investment undertakings established in the UK during the Transition Period.

The new legislation will regulate the specific requirements that market participants will have to fulfil in order to continue to operate after the Transition Period. The goal is to introduce a reliable framework that would allow financial firms to adapt to the new institutional and operational environment following the end of the Transition Period.

Next Steps

Based on the MEF press release, the proposed measures will be introduced through an emergency governmental decree (*decreto legge*), the adoption of which remains subject to future Brexit developments. No draft decree has been made available yet and therefore it is not possible to fully assess the impact of the Italian rules.

The decree will have to be converted into law by the Italian Parliament within 60 days of its publication, otherwise it will become retroactively ineffective. Consequently there may be further amendments introduced by the Italian Parliament, as well as legal uncertainty arising from the possibility that the decree is not converted into law.

While the MEF clarified that the measures have been prepared in close collaboration with the regulatory authorities, the question that remains open is whether and to what extent a national transitional regime would comply with EU law, which in some sectors already regulates third country firms.

Furthermore, the possibility for each EU Member State to tailor its own post-Brexit regime might lead to a fragmentation of the EU single market in financial services. For example, other EU Member States, including France and Germany, have already published their own draft proposals for temporary regimes in the event of a hard Brexit. The German proposals seek to preserve market access for UK firms offering financial services for a transitional period – a separate client alert will follow on this topic. The French proposals seek to permit UK firms to conduct certain life-cycle events for existing legacy trades without needing to obtain local French authorization.

White & Case LLP
Piazza Diaz 2
20123 Milan
Italy

T +39 02 00688 300

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