

Warning Notice no. 5 of October 17, 2019

No-deal Brexit - Requirements for intermediaries that provide investment services.

On March 25, 2019, the Italian Government has enacted Decree Law no. 22 (hereinafter also referred to as the “decree”) - subsequently converted, with amendments, by Law 41 of 20 May 2019 - which provides for an Italian transitional regime applicable in the event the United Kingdom leaves the European Union without a deal¹.

Intermediaries that provide investment services can take advantage of the transitional regime, by continuing to supply in Italy the same services, subject to prior notification sent to the competent authorities. Operation beyond the transitional period² is subject to the presentation of an application for authorisation to the same authorities no later than six months after the withdrawal date.

The entities that have to end their activity by the date of withdrawal must inform, among others, their clients of the initiatives taken to ensure the orderly termination of activity. The same information, due to the termination of activity, must also be provided by intermediaries that don't notify or, while having sent notification, don't apply for authorisation within the deadline of six months from the date of the start of the transitional period.

Similarly, such information must be provided by UK investment firms that – pursuant to Article 4(4) of the decree – may continue to manage the life cycle events of derivatives contracts not subject to clearing by a central counterparty (*over the counter*), even when this involves changing the contracts or entering into new contracts, as follows:

- in the absence of the notification (pursuant to Article 3(3), 3(4), of the decree) only with regard to contracts existing at the date of withdrawal, for the six months following that date;
- in the absence of the request for authorisation (pursuant to Article 3(7) of the decree) only with regard to contracts existing at the end of the period allotted for the presentation of such requests, for the six months following that date.

According to the decree, Consob shall receive:

- (i) notifications of the intention to continue operating in Italy in the transitional period from UK investment firms;
- (ii) applications for a license to operate beyond the transitional period as a non-EU-country firm from UK investment firms, or as an Italian investment firm;
- (iii) notifications of the intention to continue operating in UK in the transitional period and applications for authorisation to practise their activities beyond the transitional period in a non-EU country from Italian investment firms.

¹ It is understood that the situation may be reconsidered in the light of recent developments in the negotiations on ratifying the withdrawal deal.

² To be understood as the period between the date of withdrawal and the end of the eighteenth month following this date.

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Having not submitted such notifications - to be transmitted no later than 3 business days prior to the date of withdrawal - UK investment firms shall cease operating in Italy by the date of withdrawal.

The table below provides a guide to the requirements for UK investment firms, details of which can be found in Consob Communications no. 8 of March 29th, 2019³ and no. 10 of August 1th, 2019⁴.

In view of the approaching deadline of Article 50(3) of the Treaty on European Union, that has been further postponed to October, 31, 2019, Consob reminds intermediaries that provide investment services⁵ to promptly provide their clients, if they have not already done so, with appropriate information regarding any impacts stemming from the changed operating conditions caused by Brexit. In this regard, intermediaries shall inform their investors on either adherence to an Italian Investor Compensation Scheme or the extension of protection by the current UK Investor Compensation Scheme, in light of developments of the United Kingdom withdrawal from the European Union.

Intermediaries are reminded to send compulsory notifications, applications and notices to Consob at the following certified email address: din.Brexit@pec.consob.it.

THE CHAIRMAN
Paolo Savona

³ http://www.consob.it/documents/46180/46181/c20190329_n_8_en.pdf/0ff219e5-9138-4a86-b84f-9dc974875a_db

⁴ Such Communication (http://www.consob.it/documents/46180/46181/c20190801_n_10_en.pdf/6a36e5a8-284b-4281-9b25-257f8300e003) updates Communication no. 7 of March 26th, 2019.

⁵ UK banks that provide investment services should refer to Bank of Italy website (<https://www.bancaditalia.it/compiti/stabilita-finanziaria/informazioni-brexit/index.html>).

The table below provides only a guide to the Decree Law and Consob Communications; please, refer to the official text in order to fulfill all the respective requirements

Types of investment firms	Required steps in case of no-deal Brexit	Reference in the Decree Law
<p>UK Investment Firms providing services and activities in Italy:</p> <ul style="list-style-type: none"> - through branches; and/or - under the freedom to provide services to eligible counterparties and <i>per se</i> professional client <p>which intend to continue operations in Italy after Brexit</p>	<p>Notification to Consob of the intention to operate during the transitional period shall be transmitted no later than 3 business days prior to the date of withdrawal (Annexes 1, 2 to Consob Communication no. 10 of August 1th, 2019)</p>	<p>Article 3(3), 3(4) and 3(6)</p>
	<p>Compulsory communication to Consob – within 15 days of the withdrawal date – of information and data on existing relations with Italian clients (Annex 3 to Consob Communication no. 10 of August 1th, 2019)</p>	
	<p>Contact the Italian compensation system (ICS) and complete - by the end of 30 days from the date of withdrawal - the formalities related to the adherence thereto, unless (for only the UK firms providing investment services under the freedom to provide service) the UK ICS certifies that their investors continue to be protected</p>	<p>Article 8(5) and 8(6)</p>
	<p>Disclosure to clients on adherence to an Italian or a UK ICS and compulsory communication to Consob of such disclosure</p>	<p>Article 8(7)</p>
	<p>Request for authorization to Consob to operate after the transitional period - submitted no later than 6 months after the withdrawal date - pursuant to art. 28, paragraphs 1 and 6 of the Consolidated Law on Finance, or, where necessary, for the constitution of an Italian investment firm, pursuant to art. 19 of the Consolidated Law on Finance</p>	<p>Article 3(7)</p>
	<p>Absent a request for authorization to operate after the transitional period:</p> <p>(i) compulsory termination by the deadline for such request with a run-off period of 6 months from that date (<i>i.e.</i> 12 months of the withdrawal date), except for investment firms which may continue to manage the life cycle events of derivatives contracts not subject to clearing by a central counterparty, even when this involves changing the contracts or entering into new contracts, according to art. 4(4) of the Decree</p>	<p>Article 4(3), 4(4)</p>

Types of investment firms	Required steps in case of no-deal Brexit	Reference in the Decree Law
	Law; (ii) compulsory communication to Consob, clients and other entities with whom investment firms have relations in the provision of services, of the run-off plans, within 15 days of the deadline for such request (<i>i.e.</i> 6 months plus 15 days of the withdrawal date)	
UK Investment Firms providing services and activities in Italy under the freedom to provide services to <i>retail</i> clients and professional-upon-request clients	Compulsory termination by the date of withdrawal with a run-off period of 6 months	Article 4(1)
	Compulsory communication to Consob, clients and other entities with whom investment firms have relations in the provision of services, of the run-off plans, within 15 days of the withdrawal date	Article 4(2)
	Compulsory communication to Consob – within 15 days of the withdrawal date – of information and data on existing relations with Italian clients (Annex 3 to Consob Communication no. 10 of August 1th, 2019)	
	Contact the Italian compensation system (ICS) and complete - by the end of 30 days from the date of withdrawal - the formalities related to the adherence thereto, unless the UK ICS certifies that their investors continue to be protected	Article 8(6)
	Disclosure to clients on adherence to an Italian or a UK ICS and compulsory communication to Consob of such disclosure	Article 8(7)
UK Investment Firms providing services and activities in Italy, through branches and/or under the freedom to provide services, which don't intend to continue operations in Italy after Brexit	Compulsory termination by the date of withdrawal with a run-off period of 6 months	Article 4(3)
	Compulsory communication to Consob, clients and other entities with whom investment firms have relations in the provision of services, of the run-off plans, within 15 days of the withdrawal date	Article 4(3)
	Compulsory communication to Consob – within 15 days of the withdrawal date – of information and data on existing relations with Italian clients (Annex 3 to Consob	

Types of investment firms	Required steps in case of no-deal Brexit	Reference in the Decree Law
	Communication no. 10 of August 1th, 2019)	
	Contact the Italian compensation system (ICS) and complete - by the end of 30 days from the date of withdrawal - the formalities related to the adherence thereto, unless the UK ICS certifies that their investors continue to be protected	Article 8(8)
	Disclosure to clients on adherence to an Italian or a UK ICS and compulsory communication to Consob of such disclosure	Article 8(8)