



Communication no. 10 of August 1th, 2019

Update to Communication no. 7 of March 26th, 2019 (following the publication in the *Gazzetta Ufficiale* of Law 41 of 20 May 2019. Amendments are shown in bold-italic font).

RE: **No-deal Brexit - Requirements for intermediaries who provide investment services and activities, with or without ancillary services, resulting from the adoption of Decree Law no. 22 of March 25, 2019 laying down the transitional regime, converted by Law 41 of 20 May 2019.**

***1. REFERENCE
CONTEXT***

On March 25, 2019, in view of the continuing uncertainty over the ratification by the United Kingdom of Great Britain and Northern Ireland of the agreement for withdrawal from the Treaty on European Union adopted by the European Council on November 25, 2018, Decree Law no. 22 (hereinafter also referred to as the “decree”) was issued, ***subsequently converted, with amendments, by Law 41 of 20 May 2019, published in the Gazzetta Ufficiale of 24 May 2019.***

The regulatory measures prepared are intended to ensure continuity in the provision of investment services and activities by both Italian entities operating in the United Kingdom and British entities operating in Italy, as well as to regulate the orderly exit from the domestic market of British operators obliged to discontinue activities in Italy by the leave date.

In fact, in case of a no-deal Brexit, as of the leave date, domestic intermediaries will have to stop providing investment services and activities in the United Kingdom, given that they will no longer benefit from the European passport. Similarly, British intermediaries will no longer be able to provide their services in Italy using pre-existing authorisations.

The provisions, whose entry into force is subject to the failure to reach a withdrawal agreement, envisage different regimes according to the type of entity, the methods these entities adopt for the provision of services (freedom to provide *vs* branch) and the target client group.

Operators can take advantage of the transitional regime subject to prior notification sent to the competent authorities. Operation beyond the transitional period (to be understood as the period between the date of withdrawal and the end of the eighteenth month following this date) is



subject to the presentation of an application for authorisation to the same authorities.

The entities that have to end their activity by the date of withdrawal must inform their clients, those with whom they have relations in the provision of services and the competent authorities of the initiatives taken to ensure the orderly termination of activity. The same information must also be provided by intermediaries that, while having sent notification, fail to apply for authorisation within the deadline of six months from the date of the start of the transitional period.

2. OPERATOR REQUIREMENTS

Below is a summary of the requirements resulting from the adoption of the decree that are to be met by intermediaries providing investment services.

Unless otherwise specified, the definitions laid down in the decree law shall apply.

2.1 BRITISH INTERMEDIARIES

The **investment firms based in the United Kingdom** that, at the date of withdrawal, provide investment services and activities, with or without ancillary services, in Italy:

British investment firms

a) under the freedom to provide services, may continue to perform the same activities only with regard to eligible counterparties and professional clients (art. 6, paragraph 2-*quinquies*, letter a) and paragraph 2-*sexies*, letter a) of the Consolidated Law on Finance)¹, until the adoption of a decision of the European Commission in accordance with article 47, paragraph 1 of Regulation (EU) no. 600/2014, and in any case not beyond the transitional period (art. 3, paragraph 3 of the decree);

b) in the exercise of the right of establishment through branches, may continue, during the transitional period, to perform the same activities (art. 3, paragraph 4 of the decree);

¹ “as well as, only for the management of life cycle events of derivative contracts not subject to central clearing obligation (over the counter) outstanding at the date of withdrawal, even where this implies the modification of such contracts or the conclusion of new contracts within the limits set by article 62 of the decree-law of 25 June 2008 n. 112, converted, with modifications, by the law 6 August 2008, n. 133, of the regions, of the autonomous provinces of Trento and Bolzano and of the local municipalities” (art. 3, paragraph 3, of the decree).

c) under the freedom to provide services, in favour of retail clients (art. 1, paragraph 1, letter *m-duodecies* of the Consolidated Law on Finance) and opt-up professional clients (art. 6, paragraph 2-*quinquies*, letter b) and paragraph 2-*sexies*, letter b) of the Consolidated Law on Finance), shall terminate activity by the date of withdrawal (art. 4, paragraph 1 of the decree)².

Notifications

The investment firms referred to in points **a)** and **b)** may benefit from the transitional period subject to forwarding to CONSOB - within 3 working days prior to the date of withdrawal – a notification³ according to the attached sheets (see Annexes 1 and 2). These firms shall also send - within 15 days following the date of withdrawal - information and data on existing relations with Italian clients according to the attached form (see Annex 3).

Applications for authorisation

The same firms referred to in points **a)** and **b)**, where they intend to operate in Italy beyond the transitional period, shall submit to CONSOB - within a final deadline of six months from the date of the start of the said period - the application for authorisation to practise their activities, 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.

Without prejudice to the rules to be followed when benefiting from the transitional period, investment firms shall comply with the financial provisions applicable to them on the day prior to the date of withdrawal.

The investment firms referred to in point **c)** - within fifteen days of the date of ***withdrawal*** - shall inform clients, other entities with whom they have relations in the provision of services and CONSOB on the initiatives taken to ensure the orderly termination of activity.

Notices of termination of activity by British intermediaries

Similar information on the initiatives taken for the interruption of the activity, within the same time frame, is also provided by:

d) British banks that operate in Italy under the freedom of provision in favour of retail clients and opt-up professional clients, as well as fund managers and the UCIs that must stop activity within the date of withdrawal;

² See, footnote 1.

³ The British investment firms which, at the date of entry into force of the decree, are entitled to participate in government bond auctions don't need to provide notification in order to continue to offer investment services and activities, without prejudice to the need to present an application for authorization if they intend to operate in Italy beyond the transitional period (article 3, paragraph 6, of the decree).

- e) British banks and investment firms that have not sent notification of their intention to continue their activity in Italy during the transitional period or have decided not to apply for authorisation to provide services beyond the transitional period within six months of the start of that period⁴.

In order to avoid injury to clients, the intermediaries referred to in points c), d) and e) are required to adopt the necessary operations for the orderly termination of existing contracts, in the shortest time possible, and in any case no later than the final deadline of six months from the date of withdrawal, in compliance with the advance notice required for the dissolution of contracts. These intermediaries shall not conclude new contracts nor renew, even tacitly, existing contracts (art. 4, paragraph 1 of the decree). The intermediaries that, despite having sent notification, have decided not to apply for the provision of services beyond the transitional period, are granted a further period of six months for the termination of contracts, running from the expiry of the deadline for the submission of applications (art. 4, paragraph 3 of the decree).

Notices to clients

The notices to be sent to clients must be drafted using clear language and in such a way as to avoid causing undue alarm, while also highlighting the consequences and the measures prepared in the event of a 'hard Brexit' scenario, as well as providing adequate evidence of the initiatives taken to ensure the orderly termination of activity and of the impact on existing contractual relations.

The information notice sent to each client concerned, to be adjusted according to the type of client (retail vs professional), shall also discuss the impacts of a 'hard Brexit'. In line with the warning notices by the *European Securities and Markets Authority (ESMA)* of December 19, 2018⁵ and by CONSOB of March 12, 2019⁶, in case they have not already done so, intermediaries must provide clients with at least the following information:

⁴ For entities that have not applied for authorisation to provide services beyond the transitional period, the deadline of fifteen days for sending notices shall run from the expiry of the deadline for the submission of the aforementioned application.

⁵ With a Statement of December 19, 2018 (Reminder to firms on their MiFID obligations on disclosure of information to clients in the context of the United Kingdom withdrawing from the European Union, ESMA35-43-1328, available at https://www.esma.europa.eu/sites/default/files/library/esma35-43-1328_brexit_statement_information_to_clients.pdf), ESMA asked intermediaries operating in the provision of investment services to provide clients with information on the measures taken, or to be taken, in connection with Brexit and on the implications on their relations with these clients. Given the importance of the content and dissemination of this Statement, notice was given of its publication on the CONSOB website through a press release of December 20, 2018. The text of the press release in question can be found in the area of the CONSOB website dedicated to Brexit, where you can also find a link to a similar area of the ESMA website.

⁶ CONSOB warning notice is available at http://www.consob.it/web/consob-and-its-activities/other-regulatory-measures/documenti/english/resolutions/ra20190312_3.htm.



(i) the impact of Brexit on the way investment services and activities are provided by the firm, on the specific service provided to the client, as well as on the future relationship with the same client;

(ii) the actions taken to achieve the orderly management of the existing relationship with the client as well as the management of the requests for information and complaints received from clients in connection to Brexit (firm contact details, any dedicated telephone number, publication of FAQs on the website, special department to deal with complaints, possibility of recourse to alternative dispute resolution systems, ...);

(iii) the main implications of Brexit, including as a result of changes to the operations of the intermediary, on the contractual relationship with the client, including the presumed time scale for terminating relations according to the specific service provided (administered savings vs managed savings) and contractual provisions on the advance notice required for the dissolution of the relationship.

In compliance with the contractual obligations and the rules applicable to the provision of the activities in question, each British intermediary is responsible for identifying the most appropriate channels to communicate this information, as well as the actual content of the notices to be issued. Solutions must always be adopted that enable the firm to demonstrate that the client has actually received the notice.

The notices must be drafted in the language chosen by the client in the contract or, in the absence of such a provision, in the language used in the contract. The same information must also be published on the website of the intermediary, both in Italian and in English.

*Notices to
CONSOB*

The intermediaries referred to in points **c)**, **d)** and **e)** shall send CONSOB a notice outlining the initiatives taken to ensure the orderly termination of activity with separated evidence of any cases whose impact is considered significant as regards the orderly termination of the provision of investment services and activities or clients' rights. These intermediaries shall also send - within 15 days following the date of withdrawal - details of existing relations with Italian clients according to the attached form (see Annex 3).

2.2 ITALIAN INTERMEDIARIES

Adequate information on the consequences and the measures adopted in a 'hard Brexit' scenario must also be provided by Italian banks and investment firms (SIMs), asset management companies, open-end investment companies (SICAVs), fixed capital investment companies (SICAFs), EuVECA, EuSEF and ELTIF fund managers that provide



cross-border investment services in the United Kingdom⁷, with or without ancillary services, even in compliance with the relevant regulations established by the United Kingdom.

SIMs that, at the date of withdrawal, perform their activity in the United Kingdom may continue to operate during the transition period subject to notification sent to CONSOB at least 3 working days prior to the leave date.

SIMs may continue to operate in the United Kingdom beyond the transitional period, provided that, within the final deadline of six months from the start date of the transitional period, they submit to CONSOB the application for authorisation to practise their activities referred to in art. 26, paragraph 6 of the Consolidated Law on Finance.

SIMs that, by the date of withdrawal, have already submitted an authorisation request for the provision of the related activities are not subject to the requirements of notification and the subsequent application for authorisation to practice their activities.

* * *

The notifications, applications and notices described in this communication must be sent to CONSOB at the following certified email address: dir.Brexit@pec.consob.it. ***Any changes and/or updates to the information and data previously transmitted must be sent to the same address.***

The Chairman
Paolo Savona

⁷ The reference is, for SICAVs and SICAFs, to the marketing of UCIs.