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Brexit: first measures adopted by Italian Government on transitional period in the event of a "no-deal" scenario

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Introduction

On January 24, 2019, the Italian Ministry of Economy and Finance (MEF) published a *press release* announcing that Italy has drafted transitional measures aimed at avoiding a cliff-edge effect on financial activity in the event of the so-called "no-deal" Brexit scenario. The draft of the proposed legislative initiative has not been published.

These measures have an exceptional nature and serve the purpose of avoiding any disruption in the conduct of business activities subject to a national legal reserve in compliance with relevant EU harmonized legislation.

As clarified by the MEF in the *press release*, the measures have been agreed with Italian competent authorities (NCAs) and business associations in banking, financial and insurance sectors. Such measures should be fully effective in the event of a "no-deal" scenario. Likely, these measures will be adopted in the form of decree-law (*decreto-legge*), where conditions of urgency and necessity are met.

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Assessment of contingency needs

As highlighted by the EU Commission (see *Communication from the Commission, dated November 13, 2018, preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan* - COM/2018/880 final), the withdrawal of the UK from the EU results in the loss of the right for financial operators (banks, financial intermediaries and insurances) established in

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the UK to provide their services in the EU27 Member States under the EU financial services passports. Activities of EU operators in the UK will be subject to UK law.

As known, unless a transitional agreement is reached between the UK and the EU, all EU primary and secondary law will cease to apply to the UK from March 30, 2019 and the UK will become effectively a "third-country", with consequent discontinuity in bilateral relations with EU, unless a ratified withdrawal agreement establishes another date (so-called "deal" Brexit scenario).

The Commission has underlined the importance of preparedness for all possible scenarios, including a "no deal" scenario. The European Supervisory Authorities (ESAs) and the ECB in its supervisory capacity, the Single Supervisory Mechanism (SSM), have issued extensive opinions and guidance to underline the need for preparedness and to clarify supervisory expectations in case of business relocation. Many EU financial services firms have prepared for a scenario in which the UK is no longer part of the Single Market, for example by adjusting their contracts or relocating capacities and activities to EU27. This transfer of activities and capacity-building in the EU27 is ongoing and should be accelerated, but it will not be completed in all areas by the end of March 2019. While this could cause risks to financial stability in the EU, the risks in this sector linked to a no deal scenario have diminished significantly.

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The Withdrawal Agreement

In its *press release*, the MEF has specified that it is considering transitional measures that would apply in the transitional period envisaged in the so called "Withdrawal Agreement" that was rejected by the UK Parliament in January 2019 and is still being discussed between UK and EU negotiators. To this end, we recall that Part Four of the original draft Withdrawal Agreement approved in November 2018 states that:

- the transitional period will end on 31 December 2020;
- EU law shall be applicable to, and in, the UK during the transition period (unless otherwise provided under the Withdrawal Agreement);
- during the transition period, EU law shall produce in respect of, and in, the UK the same legal effects as those which it produces within EU and its Member States and shall be interpreted and applied in accordance with the same methods and general principles as those applicable within the Union.

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Italian transitional period

As reported in the *press release*, the measures seek to ensure financial stability, integrity and operational continuity of markets and intermediaries as well as the protection of depositors, investors and clientele in general, through the introduction of a congruous transitional period in which these subjects would be able to continue to operate under the current legislative and regulatory framework.
As for the specificities of the domestic market, the MEF has clarified that during the "Italian" transitional period:

(i) intermediaries operating in the banking, financial or insurance sector would be able to continue to operate according to the legislation currently in force (provisions would be differentiated according to the nature of the undertaking concerned, keeping into account applicable European and national legislation);
(ii) according to the Italian MEF *press release*, the option under point (i) would be valid both for UK operators that carry out activities in Italy, and for Italian operators that carry on business in the UK;
(iii) the protection of depositors and investors would also be guaranteed without interruption;
(iv) as regards pension funds' investments in funds established in accordance with UK laws, the envisaged provisions would provide for the possibility of continuing to hold such instruments during the transitional period.

The *press release* has not provided any detail on the passporting procedure to be followed by UK / Italian intermediaries, respectively in the Italian / UK market, after the Brexit in the case of a "no-deal" scenario.

In order to ensure regulatory certainty and to enable undertakings to adapt to the new post-Brexit institutional and operational context, the MEF has also anticipated that the envisaged provisions would regulate the procedures/obligations that undertaking would be required to perform - on the basis of applicable sector legislation - in order to continue to operate beyond the transitional period.

The *press release* specifies that the date of issuance of the measures depends on the next developments and the consequent determinations that will be adopted in the UK with regard to Brexit. In any case, the measures will be adopted in time to

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allow regulatory certainty and orderly conduct of business even in the event of a no-deal scenario.

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