Payments services

Hard Brexit

26 February 2019

Background

With the Brexit deadline looming just round the corner, we set out below a short summary of the measures that EU Member States are going to take with respect to the provision of regulated services in case of a Hard Brexit.

Given the high number of UK authorised financial intermediaries operating across the EU the financial service area is one of those which could be more affected by a hard (no deal) Brexit and the main EU member states are trying to address the potential impact by passing special laws and regulations.

Please find below a summary of the laws that are currently under development in the different EU member states.

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Payments – the ‘Hard Brexit’ scenario

State	Brexit related measure	Content
Belgium 	Preliminary draft law approved by the Belgian Government.	On 18 January 2019, the Belgian Government approved a preliminary draft law with certain temporary measures to address a potential hard Brexit. The draft law is not available yet, as it is still to be submitted to the Belgian Parliament for discussion. The Belgian government's intention is to have the law adopted by Parliament and entered into force by 30 March 2019 (provided no deal is found by 29 March 2019). According to the government's press release announcing the draft law, the latter should, among other things, include provisions for specific regulated activities. However, the content of these measures, as well as the type of entities and activities concerned, remains unknown for the moment.
France 	An “empowerment Law” was adopted on 17 January by the French Senate to enable the Government to adopt measures to take transitional measures in the event of hard Brexit. The government is planning on adopting several ordinances to implement measures to anticipate the consequences of a hard Brexit. There will be 5 different ordinances that will apply to the various economic and social sectors potentially impacted by a hard Brexit to ensure “the continuation, on French territory, of economic activities related to the United Kingdom”.	The 4th ordinance should contain provisions related to: • the access by French entities to interbank settlement and delivery settlement systems in third countries, including the United Kingdom, by ensuring the definitive nature of settlements made through these systems and the designation of a competent authority to supervise securitisation-related activities; • the uninterrupted use of framework agreements concerning financial services and the securing of the conditions for the execution of contracts entered into prior to the end of the recognition of British entities' licences in France. The Head of the ACPR (Mr. François Villeroy de Galhau) has also mentioned that the ACPR will propose “*the implementation of an appropriate transitional regime for the extinctive management of contracts which allows British companies to continue their activities initiated under the European passport, provided that they submit a liquidation programme to the ACPR*”.

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		At this stage, the substance of the intended measures as not been disclosed and the duration of the transitional period has not been disclosed yet. However, the Prime Minister has indicated that all ordinances will be adopted within one month.
Germany	Draft of law with transitional provisions in case of a “hard Brexit” („Brexit-StBG“); not entered into force yet.	Authority of BaFin to grant right for UK regulated banks, financial institutions and insurance undertakings to continue using of the European passport up to 21 months after occurrence of a “hard Brexit” (29 December 2020). Decision must be based on particular reasons related to each service. Brexit-StGB does not cover payment institutions and e-money institutions.
Italy	A technical table between the Italian Ministry of Economy and Consob is currently drafting a new law to deal with the problems connected with non-standard derivatives agreements which are not regulated amongst central counterparty. A law decree is under preparation to deal with the “Brexit no deal scenario” and will be issued before 29 March.	Derivatives agreement. The law is aimed at regulating over a period of 21 months the activity in Italy of UK financial intermediaries and asset managers and should be based on the EU Commission recommendations, with the purpose of avoiding any financial and economic shock during the transition period. The law should be applicable to the 70 banks, 233 payment institutes and 100 electronic money issuers based in the UK, plus 58 insurance companies and 21 pension funds.
Netherlands	Legislative proposal with transitional provisions for a hard, no-deal Brexit ("Verzamelwet Brexit"); not entered into force yet. Transitional regime regarding the right of residence of UK citizens in the Netherlands.	The Verzamelwet Brexit does not specifically relate to provision of regulated services. On the basis of this act, measures can be taken for reasons of urgency by ministerial regulation (e.g. by the Minister of Finance) to deviate from an act of parliament insofar this is necessary in the light of preventing unacceptable consequences of the Brexit. Until one year after the Brexit, (transitional) measures can be taken.

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		Based on the transitional regime regarding the right of residence of UK citizens in the Netherlands, UK citizens and their family members that reside legitimately in the Netherlands prior to Brexit on 29 March 2019 will be allowed to reside, work and study for at least 15 months in the Netherlands in case of a hard, No-deal Brexit.
Spain 	The Spanish Government has announced that is currently drafting a Royal Decree-Law with Brexit-related measures (the text of the draft bill is not public).	The only information publicly available is that provided in some non-binding Q&A's published by the Spanish Government and the Bank of Spain, giving some hints as to the legal regime that will be applicable in each of the possible scenarios (i.e. the provisions of the Commission's "Withdrawal Agreement" in case of a "Deal Brexit" (either soft or hard), and the European "third-country regime" in case of "No-deal Brexit"). In the event of a "Deal Brexit", the Spanish Government has stated that it will supplement the measures envisaged in the "Withdrawal Agreement" for financial services with local measures (not disclosed yet). No specific reference for measures relating to a "No-deal Brexit" scenario have been made yet.
Sweden 	Proposal that the Swedish Government with specific regulations in the event of a hard Brexit - not entered into force yet.	Proposal is limited to investment firms. Exemption from license requirement for the provision of investment services to professional clients with whom investment firms entered into agreements prior to 29 March 2019. Permission of UK entity must have been granted prior to 29 March 2019. The exemption would only be in force until 31 December 2020.

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UK 	Proposal for a Temporary Permissions Regime (TPR) in the event of a "hard Brexit" is currently under consultation, with final text expected early 2019. Also, a second and related consultation is ongoing concerning the application of certain FCA rules to firms in the TPR regime. Final versions of these rules are expected before exit day.	The TPR can be used by inbound passporting EEA firms and funds, payment and electronic money institutions. The TPR can only be used by firms that have submitted a notification (in the required form) to the FCA by the end of 28 March 2019. Under the TPR, these firms will be able to continue to operate in the UK, whilst providing sufficient time for them to obtain UK authorisation. After notification, one of two 'landing slots' will be allocated to a firm (either October to December 2019, or during several landing slots from January 2020 and with the last slot closing at the end of March 2021) within which they must submit an application for UK authorisation. The regime is expected to be in place for a maximum of three years. (The period will vary from firm to firm depending on when they are asked to submit their full application in the UK.)