
URÍA MENÉNDEZ

Financial contingency measures in view of the
withdrawal of the United Kingdom from the
European Union

7 March 2019

Introduction

On 2 March 2019, Royal Decree-Law 5/2019 of 1 March adopting contingency measures in different areas in view of the withdrawal of the United Kingdom of Great Britain and Northern Ireland (the “**UK**”) and the Colony of Gibraltar (“**Gibraltar**”) from the European Union (“**EU**”) was published in the Official State Gazette (“**BOE**”), without the agreement provided for in Article 50.(2) of the Treaty on European Union having been reached (the “**Royal Decree-Law**”).

In terms of the provision of financial services, the Royal Decree-Law affects entities which, being authorised, registered and domiciled in the UK or Gibraltar, provide financial services in Spain under the “passport” provided for in various EU financial directives (the “**Entities**”).

The Royal Decree-Law shall enter into force on the day on which the Treaties of the European Union cease to apply to the UK in accordance with the provisions of Article 50.(3) of the Treaty on European Union. However, it will not enter into force if, prior to that date, a formalised withdrawal agreement between the EU and the UK has entered into force in accordance with Article 50.(2) of the Treaty on European Union.

The contingency measures adopted by the Royal Decree-Law on financial services are the following:

1. **CONTINUITY OF CONTRACTS EXISTING BEFORE THE BREXIT**

Contracts for the provision of financial services entered into by the Entities prior to the effective withdrawal date of the UK from the EU will remain in force after such withdrawal and, consequently, the obligations of all parties will remain in effect.

2. **AUTHORISATION TO PROVIDE SERVICES IN SPAIN**

Without prejudice to the foregoing, the Entities will need to obtain new authorisations as entities from third-party states for:

- renewing contracts signed prior to the UK’s effective withdrawal from the EU;
- introducing modifications to them that entail the provision of new services in Spain or that affect the essential obligations of the parties;
- those cases in which activities linked to the management of existing contracts require authorisation; and

- entering into new contracts.

3. TRANSITIONAL REGIME

Without prejudice to the foregoing, the authorisation or registration initially granted by the competent British authority to the Entities and the “passport” to operate in Spain shall temporarily remain valid, for a period of nine months following the withdrawal of the UK from the EU, **only in relation to the management of contracts signed prior to said withdrawal that require authorisation**, to the extent that during said period:

- a) the orderly termination or transfer thereof to a duly authorised entity is carried out; or
- b) an application is made for authorisation to operate in Spain under any of the regimes provided for in legislation currently in force, including the creation of a subsidiary.

The transitional regime shall commence on the date of the entry into force of the Royal Decree-Law and shall lapse in nine months after the withdrawal of the UK from the EU, regardless of the date on which the application for authorisation is made.

4. POWERS OF SUPERVISORY AUTHORITIES

The Bank of Spain, the National Securities Market Commission and the Directorate General for Insurance and Pension Funds will supervise the the Entities’ alignment with the legal regime established by the Royal Decree-Law and may, ultimately, in the event of non-compliance, retract the effects of the transitional regime for that Entity.

The three supervisory authorities may adopt the measures they consider appropriate to guarantee legal certainty and to safeguard the interests of users of financial services who may be affected by the withdrawal of the UK from the EU.

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