

French draft bill addresses key Brexit legal concerns

07 December 2018

On 3rd October 2018, the French Government published a draft bill providing the Government with the power to adopt legislation to mitigate the risks arising from the situation where the UK and the EU27 fail to ratify the Article 50 of the Treaty on European Union (the **Hard Brexit Draft Bill**).

The Hard Brexit Draft Bill does not address technical issues regarding market access and licensing for UK based financial services firms and banks. Instead, it only seeks to enable the French Government to adopt legislative measures to tackle cliff edge risks arising from a hard Brexit in an expedited manner as compared to the usual process that is undertaken in the French Parliament.

The Hard Brexit Bill – an overview

On 6 November 2018, the *Sénat* voted on the Hard Brexit Draft Bill and amended it to clarify the legal position that will apply during the transitional period that will start between a hard Brexit on 29 March 2019, and the date on which potential bilateral treaties between France and the United Kingdom are adopted and enter into force. The Hard Brexit Bill:

- i. establishes the regulatory framework that will apply to British nationals who are lawfully resident in France at the time of withdrawal from the EU of the United Kingdom;
- ii. preserves economic activities on the French territory; and
- iii. provides exemptions, simplified administrative procedures and regularization periods for the legal or natural persons.

The *Assemblée Nationale* (which has the power to endorse the last decision) will review the text and vote on 10 December 2018. It should be noted that since this legislation is enabling the French Government to prepare for a hard Brexit, should instead the UK and EU27 be successful in ratifying the Article 50 withdrawal agreement and the political declaration of the future relationships prior to 29 March 2019, the Hard Brexit Draft Bill will be withdrawn.

Where the Hard Brexit Bill is adopted, the French Government will have the ability to take specific measures:

- in relation to the exercise, by a natural or legal person, of regulated activities which were conducted on 29 March 2019. In relation to individuals, the aim is to fully recognise professional qualifications that were obtained in the United Kingdom prior to Brexit in circumstances where the holders of such qualifications will continue to carry on their activity in France as of 30 March 2019; and
- with respect to notably the financial services industry:

- ❖ provide French firms with access to third country (including UK based) interbank and settlement systems thereby enabling French market participants to continue to conduct business post-Brexit;
- ❖ ensure the continuity of the use of master agreements regarding financial services; and
- ❖ safeguarding the performance of on-going contracts concluded prior to the loss of recognition of the authorisations of British firms based in France.

Practical comment

The Hard Brexit Draft Bill and its implementing ordinances should provide some comfort to market participants even though, pursuant to the Hard Brexit Draft Bill, the French government will only be required to concretely adopt the implementing ordinances within twelve months following the entry into force of the Hard Brexit Draft Bill.

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If you would like to discuss the issues raised in this paper in more detail, please contact any of the experts above or your usual Allen & Overy contact.

N°15

SENATE

REGULAR SESSION of 2018-2019

6 November 2018

DRAFT LAW

entitling the **Government** to take **preparatory measures**

by Ordinance on the **Brexit**

(accelerated procedure)

The Senate has adopted, at the first reading after the initiation of the accelerated procedure, the draft law, which is as follows:

See the number:

Senate: 9, 92 and 93 (2018-2019)

1st Article

I. – In respect of Article 38 of the Constitution, in order to draw the consequences of the withdrawal of the United Kingdom from the European Union without any agreement concluded pursuant to Article 50 of the

Treaty on European Union, the Government is authorized to introduce by ordinances the measures entering the scope of law regarding :

1° The right of entry and residence of British nationals in France;

2° The employment of British nationals legally exercising a right to live in France on the date of the withdrawal from the United Kingdom of the European Union without any agreement of an employed professional activity or are called upon to exercise an employed professional activity within companies based in the United Kingdom on the date of the withdrawal from the United Kingdom of the European Union without any agreement whereby the British nationals chose to remain in France after the withdrawal of the United Kingdom of the European Union without any agreement;

3° The exercise, by a natural or legal person legally employed on the date of the withdrawal from the United Kingdom of the European Union without any agreement, of an activity or a profession access to which and pursuit of which are subject to conditions. The professional qualifications obtained in the United Kingdom are immediately recognised once their holders exercise an employed professional activity in France on 30 March 2019 or are called upon to exercise an employed professional activity within companies based in the United Kingdom on the date of the withdrawal from the United Kingdom of the European Union without any agreement that chose to deploy in France after the withdrawal of the United Kingdom of the European Union without any agreement;

4° Regulations applicable to the situation of the British national tenured staffs and trainees of the public administration;

5° The application, to the British nationals legally resident in France on the date of the withdrawal from the United Kingdom of the European Union without any agreement, of the legislation regarding social rights and social gains or, after this date, called upon to exercise an employed professional activity within companies based in the United Kingdom on the date of the withdrawal from the United Kingdom of the European Union without any agreement whereby the British nationals chose to remain in France after the withdrawal of the United Kingdom of the European Union without any agreement;

6° The control over goods and passengers to and from the United Kingdom and veterinary and phytosanitary import control from the United Kingdom;

7° The completion of road freight transport operations or passenger transport in France, including in transit, by natural or legal persons based in the United Kingdom.

In accordance with the conditions laid down in the first subparagraph of this I, the Government is also entitled to adopt any other necessary measures for processing of British nationals resident in or exercising an activity in France as well as legal persons based in the United Kingdom and exercising an activity in France, in order to preserve the interests of France on economic and financial matters and on issues regarding defence and security.

II (new) – The ordinances provided for in Article 1 I seek to, in anticipation of, when appropriate, treaties or bilateral treaties, draw the consequences of the withdrawal of the United Kingdom of the European Union without any agreement, in order to:

1° Regularise the situation in France of the British nationals legally resident in the national territory on the date of the withdrawal from the United Kingdom of the European Union without any agreement;

2° Preserve the economic activities in France;

3° Preserve the flow of goods and people to and from the United Kingdom;

4° Guarantee a high level of health security;

5° Provide for derogations, simplified administrative procedures as well as deadlines to regularise for concerned legal or natural persons.

These ordinances may provide that the measures granting British nationals, or legal persons based in the United Kingdom, a more favourable treatment than third-country nationals or legal persons based in a third country will cease to give effect if the United Kingdom does not grant an equivalent treatment.

III (new). – The ordinances laid down in this Article 1 are issued within a maximum period of twelve months from the date of publication of this law.

Article 2

I- In accordance with the conditions laid down in article 38 of the Constitution, the Government is entitled to take measures by ordinance that are normally the preserve of statute law to draw the consequences of the withdrawal of the United Kingdom from the European Union without any agreement concluded pursuant to Article 50 of the Treaty on European Union, with respect to:

1° The consideration for the entitlement and determination of social rights, insurance periods, professional activities or training conducted or undertaken in the United Kingdom by the date of the withdrawal from the United Kingdom of the European Union without any agreement;

2° The consideration of academic and professional qualifications acquired or in the process of being acquired in the United Kingdom on the date of the withdrawal from the United Kingdom of the European Union without any agreement as well as the academic and professional qualifications which are part of a training programme framework integrating those acquired or in the process of being acquired on the same date;

3° The prosecution by the beneficiaries of the product and material transfer licenses and authorisation from the United Kingdom, issued in accordance with article L.2335-10 and L.2335-18 of the defence code by the date of the withdrawal from the United Kingdom of the European Union without any agreement, the supply of goods and materials until the expiration of the term fixed by the licences and authorisations;

4° The access of the French entities to the interbank and securities settlement systems of the third parties including the United Kingdom while ensuring the definitive nature of the settlement effected by means of these systems, the continuity of the use of master agreements regarding financial services and the safeguarding of the conditions of execution of contracts concluded before the loss of recognition of the authorisations of the British entities based in France;

5° The continuity of the flow of passenger and freight transport between France and the United Kingdom through the channel tunnel in the view of ensuring the compliance of France with its commitments as licensor of the channel tunnel.

II(new). – The ordinances provided for in above Article 2 II seek, in anticipation of, when appropriate, treaties or bilateral treaties, to:

1° Preserve the social and professional rights of French nationals and other persons to whom the law of the European Union prohibits treating them differently;

2° Preserve the interests of France on economic and financial matters, and on issues regarding defence and security.

III (new). – The ordinances provided for in this article are issued within a maximum period of twelve months from the date of publication of this law .

Article 3

I- In accordance with the conditions laid down in article 38 of the Constitution, the Government is entitled to take measures by ordinance temporarily required by the withdrawal of the United Kingdom from the European Union without any agreement in order to anticipate the simplified procedural arrangements applicable to works relating to the building or the urgent development of premises, installations or port, rail, airport and road infrastructures required by the re-establishment of passengers and goods controls to or from the United Kingdom.

The ordinances provided for in this Article may require the Government to make it applicable to the transactions mentioned in the first paragraph of above Article 3 I directly related to the organisation of these controls, adaptations or derogations regarding development measures, urban planning, expropriation on the basis of public utility, protection of heritage, roadway and transports, public domain, public procurement, regulations applicable to ports, public participation and environmental assessment in order to adapt them to the urgency of these operations.

The adaptation or derogations as temporary instituted in accordance with fundamental rights and freedoms guaranteed by the Constitution are strictly proportionate for the maintenance of security and the smooth flow of passenger and goods.

II (new). – The ordinances provided for in this Article are issued within a maximum period of twelve months from the date of publication of this law .

Article 4

For each of the ordinances provided for in Article 1 to 3, the Parliament shall have been provided with a draft ratification act within a maximum period of three months from the date of publication of this law .

Debated at public session, Paris, 6 November 2018.

The Chairman,

Signed: Gérard LARCHER