Brexit: Why Greece needs to introduce legislative measures

by Georgia Koutsoukou*

The draft Agreement on the Withdrawal of the United Kingdom from the European Union was endorsed by the UK Government and the European Council on 25 November 2018. However, it has been voted down repeatedly by the UK Parliament., leading to a postponement the Withdrawal of the United Kingdom from the European Union until 31 October 2019.

As the possibility of a no-deal Brexit has never loomed larger than in the current moment, Greece should consider shielding its vital economic sectors from the potentially damaging impact of a no-deal Brexit. Unlike other Member States, Greece has only introduced legislation relating to the personal status of UK citizens following a hard Brexit (Law 4604/2019) but has not passed any law on trade and economic relationships between Greece and the UK in the event of a hard Brexit.

Therefore, following the example of other Member States Greece should introduce a transitional regime concerning its economic relationships with the UK for a limited period after a no-deal Brexit in the following sectors:

(i) Business finance

During the financial crisis, important economic actors (including shipping companies) made use of credit facilities and loans granted by UK credit institutions due to high borrowing costs in Greece or made use of investment services offered by UK investment firms. Following a no-deal Brexit, UK credit institutions will lose their passport. Greece should take action in this regard, in order to safeguard undisrupted financing for Greek corporations and protect existing relationships for a transitional period (e.g. up to 24 months) following a no-deal Brexit. Among other measures, Greece could extend for a transitional period the EU passport for UK credit institutions.

(ii) Payments

Greece has a strong interest in maintaining trade relations with the UK after a no-deal Brexit. As a necessary corollary, Greece should take measures in order to counterbalance the loss of the EU passport by UK payment institutions or e-money institutions. Apart from the general risk of damaging long standing trade relationships, due attention must be paid to possible disruptions of payments, with emphasis on the settlement risk. For instance, in case of on-going relationships where a UK payment institution provides services to a customer (merchant) on a continuous basis, the UK payment service provider may no longer be able to settle transactions that are processed/cleared prior to the exit day but are actually settled after the exit day without authorisation by the Greek Competent Authority. Therefore, Greece should consider transitional measures, in order to ensure safe and fast payments in relation to the UK, including extension of the EU passport of UK payment institutions or e-money institutions (e.g for up to 24 months), in order to enable transition.

(iii) Cross-border M&As

In the recovery years between 2015 and 2018, Greece has seen a significant increase in M&As with participation of UK based corporations. However, we note that Greek law on cross-border mergers allows for cross-border mergers of limited liability corporations only within the single market. Should the UK exit the EU without a deal, UK will be considered a third country and, therefore, cross-border mergers with UK corporations could not enter into effect. For the completion of the mergers between Greek and UK Corporations, Greece will have to amend its legal framework (for instance, Greece could consider to allow the completion of the merger after the date of the exit without a deal, if the pre-merger certificate was issued prior to the UK's no-deal departure from the EU).

(iv) Insurance

Following a no-deal Brexit, UK insurance and reinsurance undertakings will lose their EU passport, which might affect the rights of Greek policyholders or even affect the insurance sector in Greece due its significant exposure to UK reinsurance undertakings. If the UK is not granted provisional or formal equivalence under Solvency II, Greece would have to introduce measures to protect Greek individual policyholders and Greek insurance undertakings that have entered into reinsurance contracts with UK reinsurers since they will have to apply more onerous rules for capital purposes under Solvency II.

** Dr. Georgia Koutsoukou, Senior Associate at Rokas International Law Firm*