



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

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8 February 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF INSURANCE / REINSURANCE

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020. Until that date, EU law in its entirety applies to and in the United Kingdom.³

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which will be very different from the United Kingdom’s participation in the internal market.⁴

Moreover, after the end of the transition period the United Kingdom will be a third country as regards the implementation and application of EU law in the EU Member States.

Therefore, all interested parties, and especially economic operators, are reminded of the legal implications that the end of the transition period will have on their activities.

Advice to stakeholders:

In view of this notice, service providers in the field of insurance and reinsurance services and insurance distribution are advised to assess the consequences of the end of the transition period, duly inform their EU customers, and take appropriate action in a timely

¹ A third country is a country which is not a Member State of the EU.

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

³ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

⁴ In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition.

fashion, which could include the transfer of contracts and/or activities to the EU.

Please note: This notice does not address

- EU rules on conflict of laws and jurisdictions (“judicial cooperation in civil and commercial matters”);
- EU company law;
- EU rules on personal data protection;
- EU rules on travelling between the EU and the United Kingdom.

For these aspects, other notices are in preparation or have been published.⁵

After the end of the transition period, the EU rules in the field of insurance/reinsurance (in particular the Solvency II Directive 2009/138/EC⁶ and Directive (EU) 2016/97⁷) setting out the framework governing the activities of insurance/reinsurance undertakings across the EU, the protection of policyholders and the distribution of insurance products no longer apply to the United Kingdom. This has in particular the following consequences:

1. AUTHORISATIONS

- UK insurance undertakings will no longer benefit from the Solvency II authorisation⁸ to provide services in the EU (they will lose the so-called "EU passport") and will become third-country insurance undertakings. This means that those insurance undertakings will no longer be allowed to provide services in the EU, including through online sales,⁹ on the basis of their current authorisations.
- Branches of UK insurance undertakings in the EU will become branches of third-country insurance undertakings. They will need an authorisation in the Member State of their activity to be able to continue to do business and have to comply with the conditions set out in Article 162 of the Solvency II Directive. The authorisation of a branch however does not grant the right to conduct business across the EU, but only in the Member State that has granted the authorisation.

⁵ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en.

⁶ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 355, 17.12.2009, p. 1.

⁷ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (IDD), OJ L 6, 2.2.2016, p. 19.

⁸ Article 14 of the Solvency II Directive.

⁹ Chapter 8, Sections I and II of the Solvency II Directive.

- EU subsidiaries (legally independent companies established in the EU and controlled by or affiliated to insurance undertakings established in the United Kingdom) can continue to operate as EU insurance undertakings on the basis of their authorisation in the Member State of establishment and subject to their compliance with the EU rules, including in terms of solvency, governance (notably risk management and outsourcing) and disclosure requirements.¹⁰
- UK reinsurance undertakings will be impacted for their EU business. According to the Solvency II Directive, they will be subject to the conditions set by the EU Member State in which they carry out their activity. These conditions cannot be more favourable than those applying to reinsurance undertakings from the EU,¹¹ but they may be less favourable and may well differ between EU Member States: for example, Member States are free to require the pledging of assets or the establishment of a branch by the UK reinsurance undertakings. The Commission is empowered to declare the UK framework equivalent, which results in treating reinsurance contracts concluded with undertakings having their head office in the United Kingdom in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with Solvency II. While the assessment of the United Kingdom's equivalence in this area is ongoing, the assessment has not been finalised. UK reinsurance undertakings thus have to prepare for a situation with no equivalence.

2. INSURANCE CONTRACTS

- Service continuity: The loss of the EU authorisation may affect the ability of UK insurance undertakings to continue performing certain obligations and activities and ensure service continuity with regard to contracts concluded before the end of the transition period.¹² According to the Solvency II Directive, firms are required to take measures to ensure that contracts can continue to be serviced. To this end, firms should assess the implications of the end of the transition period on their operations and contract portfolios and, also in cooperation with the relevant national supervisors, identify and mitigate risks.¹³

¹⁰ See also the European Insurance and Occupational Pensions Authority (EIOPA)'s Opinion of 11 July 2017 on supervisory convergence in light of the United Kingdom withdrawing from the European Union (<https://www.eiopa.europa.eu/content/supervisory-convergence-light-uk-withdrawing-eu>), EIOPA's Opinion of 1 May 2018 on Solvency position of insurance and reinsurance undertakings in light of the withdrawal of the UK from the EU (<https://www.eiopa.europa.eu/content/solvency-position-insurance-and-reinsurance-undertakings-light-withdrawal-uk-eu>) and EIOPA's Opinion of 1 June 2018 on Disclosure of information to customers about the impact of the withdrawal of the UK from the EU (<https://www.eiopa.europa.eu/content/disclosure-information-customers-about-impact-withdrawal-uk-eu>).

¹¹ Article 174 of the Solvency II Directive.

¹² Also considering applicable national rules.

¹³ See Article 41(4) and 46(2) of the Solvency II Directive. See also the EIOPA Opinion of 1 December 2017 on service continuity in insurance in light of the withdrawal of the United Kingdom from the European Union (<https://www.eiopa.europa.eu/content/service-continuity-insurance-light-%C2%A0withdrawal-uk-eu>).

3. OTHER ASPECTS

- Information disclosure: According to Articles 183-186 of the Solvency II Directive and Articles 17-25 of Directive (EU) 2016/97, policyholders/customers should be informed about the impact of the end of the transition period on their rights and on the provision of insurance services, including the upcoming loss by the relevant insurance undertaking/intermediary of its EU authorisation.
- Group supervision: Insurance/reinsurance undertakings operating in the EU as part of a group with the parent undertaking registered in the United Kingdom will be impacted. According to the Solvency II Directive, they will be subject to the Solvency II provisions empowering EU supervisory authorities to require a worldwide group solvency or to apply other methods aiming to ensure appropriate group level supervision including the establishment of a holding company with head office in the EU.¹⁴
- The Commission is empowered to declare the UK framework as equivalent, which would remove the application of these requirements.¹⁵ While the assessment of the United Kingdom's equivalence in this area is ongoing, the assessment has not been finalised. All stakeholders thus have to be informed and ready for a scenario where there is no equivalence. In addition, any group-level internal model covering a UK group operating in the EU, approved by the UK Prudential Regulatory Authority before the end of the transition period will no longer be recognised in the EU after the end of the transition period, and will require a new application and approval by an EU supervisor. Any entity-level internal model for a subsidiary of an UK insurance undertaking established in one of the EU Member States and approved by the supervisor of that Member State will however remain valid.
- Insurance/reinsurance intermediaries registered in the United Kingdom will no longer benefit from their registration rights under Directive (EU) 2016/97¹⁶ and will therefore no longer be able to conduct business in the European Union on the basis of their UK registration.

The website of the Commission on Insurance and Pensions (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/insurance-and-pensions_en) provide for general information concerning insurance/reinsurance activities. These pages will be updated with further information, where necessary.

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¹⁴ Article 262 of the Solvency II Directive.

¹⁵ In the absence of equivalent supervision referred to in Article 260 of the Solvency II Directive.

¹⁶ Article 3 of Directive (EU) 2016/97.