



Brussels, 8 February 2018

NOTICE TO STAKEHOLDERS

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

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, unless a ratified withdrawal agreement¹ establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').² The United Kingdom will then become a 'third country'.³

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, insurance/reinsurance undertakings, policyholders and other stakeholders are reminded of certain legal repercussions which need to be considered when the United Kingdom becomes a third country.

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, the EU rules in the field of insurance/reinsurance, (in particular the Solvency II Directive⁴ and the Insurance Distribution Directive⁵) 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 Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

² Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

³ A third country is a country not member of the EU.

⁴ 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.

⁵ 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.

1. AUTHORISATIONS

- UK insurance undertakings will no longer benefit from the Solvency II authorisation⁶ to provide services in the Union (they will lose the so-called "EU passport") and will be 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,⁷ on the basis of their current authorisations.
- Branches of UK insurance undertakings in the EU will be 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 Member States, but only in the Member States that has granted the authorisation.
- EU-27 subsidiaries (legally independent companies established in EU-27 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 EU Member State of their establishment and subject to their compliance with the EU rules, including in terms of governance, risk management, and outsourcing.⁸
- UK reinsurance undertakings will have to comply, for their EU business, with 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 companies from the EU,⁹ 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 third country reinsurer. This is without prejudice to any equivalence decision that may be adopted by the EU,¹⁰ whereby reinsurance contracts concluded with undertakings having their head office in that third country must be treated by EU Member States in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with Solvency II.

⁶ Article 14 of the Solvency II Directive.

⁷ Chapter 8, Sections I and II of the Solvency II Directive.

⁸ See also the European Insurance and Occupational Pensions Authority (EIOPA) guidance for national competent authorities on the principles of authorisation and supervision in the context of the UK withdrawal from the European Union (https://eiopa.europa.eu/Publications/Opinions/EIOPA-BOS-17-141%20Opinion_Supervisory_Convergence.pdf).

⁹ Article 174 of the Solvency II Directive.

¹⁰ Article 172 of the Solvency II Directive.

2. INSURANCE CONTRACTS

- Contract continuity: The loss of 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 withdrawal date.¹¹ 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 impact of the withdrawal of the United Kingdom from the European Union on their operations and contract portfolios and, also in cooperation with the relevant national supervisors, identify and mitigate risks.¹²

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 on their rights and on the provision of insurance services that may emerge from the withdrawal of the United Kingdom from the EU, including the upcoming loss by the relevant insurance undertaking/intermediary of its EU authorisation.
- Group supervision: Insurance/reinsurance undertakings operating in the EU but part of a group with the parent undertaking registered in the United Kingdom will be subject, in the absence of equivalence supervision,¹³ 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 Union.¹⁴

Any group-level internal model covering a UK group operating in the EU, approved by the UK Prudential Regulatory Authority before the withdrawal date will no longer be recognised in the EU as of the withdrawal date, and will require a new application and approval by an EU-27 supervisor. Any entity-level internal model for a subsidiary of an UK insurance undertaking established in one of the EU-27 Member States and approved by the supervisor of that Member State will remain valid.

¹¹ Also considering applicable national rules.

¹² See Article 41(4) and 46(2) of the Solvency II Directive. See also the EIOPA Opinion of 21 December 2017 on service continuity in insurance in light of the withdrawal of the United Kingdom from the European Union https://eiopa.europa.eu/Publications/Opinions/2017-12-21%20EIOPA-BoS-17-389_Opinion_on_service_continuity.pdf

¹³ In the absence of equivalent supervision referred to in Article 260 of the Solvency II Directive.

¹⁴ Article 262 of the Solvency II Directive.

- Insurance/reinsurance intermediaries registered in the United Kingdom will no longer benefit from their registration rights under Directive (EU) 2016/97¹⁵ 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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¹⁵ Article 3 of Directive (EU) 2016/97.