

## **Opinion on service continuity in insurance in light of the withdrawal of the United Kingdom from the European Union**

### **1. Legal basis**

- 1.1. The European Insurance and Occupational Pensions Authority (EIOPA) provides this Opinion on the basis of Article 29(1)(a) of Regulation (EU) No 1094/2010<sup>1</sup>. According to this article, EIOPA shall play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union by providing opinions to competent authorities.
- 1.2. This Opinion is also based on Directive 2009/138/EC (Solvency II)<sup>2</sup> and addressed to the competent authorities, as defined in point (i) of Article 4(2) of Regulation (EU) No 1094/2010.

### **2. Context and objective**

- 2.1. The United Kingdom (UK) on 29 March 2017 notified the European Council of its intention to withdraw from the European Union. The withdrawal will take place on the date of entry into force of a withdrawal agreement or, failing that, two years after the notification on 30 March 2019 (Withdrawal date).
- 2.2. The UK's decision to withdraw from the European Union includes the UK leaving the European single market.<sup>3</sup> The UK will become a third country (non-EU) for

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<sup>1</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

<sup>2</sup> Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

<sup>3</sup> See: HM Government, The United Kingdom's exit from and new partnership with the European Union, February 2017

the purposes of applying the Solvency II framework after the Withdrawal date. Until then the European Union legislative framework will remain in force in the UK. It is noted that there are ongoing negotiations between the European Union and the UK on a withdrawal agreement. The outcome of the political negotiations is uncertain at this stage and outside EIOPA's remit.

- 2.3. Solvency II allows insurance undertakings to pursue business in the European Union, only if the undertaking is authorised in the European Union. Based on this authorisation undertakings may conduct business on a freedom of establishment and freedom to provide services basis in other Member States. Solvency II allows a third country undertaking to pursue business in a Member State of the European Union through an authorised third country branch.
- 2.4. Upon withdrawal from the single market and in absence of a political agreement between the European Union and the UK to the contrary, UK insurance undertakings lose their right to conduct business in the Member States of the European Union by way of freedom of establishment and freedom to provide services. Insurance undertakings in Member States other than the UK (EU27) similarly lose their right to conduct business into the UK by way of freedom of establishment and freedom to provide services.
- 2.5. Insurance contracts concluded before the Withdrawal date by UK insurance undertakings in the EU27 and by EU27 insurance undertakings in the UK by way of freedom of establishment and freedom to provide services are in principle valid after that date. The insurance undertakings would however not be authorised anymore to carry out insurance activities with regard to these cross-border insurance contracts by way of freedom of establishment or freedom to provide services. This includes insurance portfolios in run-off.
- 2.6. Without taking mitigating actions before the withdrawal, insurance undertakings will usually not be able to ensure the continuity of their services with regard to such cross-border insurance contracts, which may prevent them from fulfilling these contracts.
- 2.7. The policyholders and beneficiaries of these cross-border insurance contracts will be exposed to significant uncertainty, for a prolonged period as cases relating to the continuation of the insurance service may be considered by national courts.
- 2.8. The main objective of insurance supervision as defined by Solvency II is the protection of policyholders and beneficiaries. For the protection of policyholders and beneficiaries it is essential that insurance contracts are fulfilled and insurance benefits are paid when they fall due.
- 2.9. The aim of this Opinion is to remind supervisory authorities and insurance undertakings to take the necessary steps in order to prevent insurance activities without authorisation and ensure service continuity with regard to insurance

contracts concluded before the Withdrawal date by way of freedom of establishment or freedom to provide services so that these contracts will be fulfilled also after the withdrawal of the UK from the European Union.

### **3. Ensuring service continuity**

- 3.1. As part of the sound and prudent management of their business insurance undertakings are responsible for fulfilling their insurance obligations. In particular they are required to assess the possible impact of any changes in the legal environment on their operations and to identify and assess compliance risk.<sup>4</sup> The withdrawal of the UK from the European Union results in such changes in the legal environment. Insurance undertakings are also required to take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans.<sup>5</sup>
- 3.2. EIOPA has established a high-level cooperation platform for supervisory authorities to exchange of information and facilitate cooperation on Brexit-related topics, including the service continuity of cross-border business between UK and EU27. In this respect, EIOPA has analysed possible options which are available under the current legal framework to ensure service continuity with regard to those contracts. The options, which potentially need to be combined for some portfolios in order to ensure service continuity, include:
- the transfer of insurance contracts of UK undertakings with policyholders in the EU27 to an insurance subsidiary established in an EU27 Member State,
  - the transfer of insurance contracts of EU27 undertakings with UK policyholders to an insurance subsidiary established in the UK,
  - the establishment of a third country branch in the UK or in the EU27 Member State of the policyholder, and
  - with regard to UK undertakings in the legal form of a European company, the change of domicile of the company to an EU27 Member State.
- 3.3. The appropriateness of all the options the insurance undertaking can make use of depends on the particular situation of the affected entities. Taking up the options may require preparatory measures by the undertaking such as the establishment of an insurance subsidiary or the change of legal form to a European company.
- 3.4. On the basis of their powers to review the system of governance of the insurance undertakings authorised in their jurisdiction and to require that the system of governance is improved and strengthened to ensure compliance with legal

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<sup>4</sup> Article 46(2) of Solvency II

<sup>5</sup> Article 41(4) of Solvency II

requirements<sup>6</sup>, supervisory authorities should take the necessary actions to ensure the following:

- i. that insurance undertakings assess, on an ongoing basis, the impact of the withdrawal of the UK from the European Union on their business, including for the service continuity of insurance contracts concluded by UK insurance undertakings in the EU27 and by EU27 insurance undertakings in the UK by way of freedom of establishment and freedom to provide services;
- ii. that insurance undertakings with such cross-border insurance contracts develop contingency plans that set out measures to prevent insurance activity without authorisation and ensure service continuity after the Withdrawal date;
- iii. that the contingency plans include the scenario that on the Withdrawal date the UK becomes a third country and leaves the internal market;
- iv. that undertakings do not rely in their contingency plans on any arrangement between the European Union and the UK to continue after the Withdrawal date the access of UK insurance undertakings to the EU27 insurance market or the access of EU27 insurance undertakings to the UK insurance market, unless and until such an arrangement is agreed between the two parties;
- v. that the implementation of the contingency plans is realistic;
- vi. that insurance undertakings implement the necessary measures to prevent insurance activity without authorisation and ensure service continuity by the Withdrawal date.

3.5. In assessing whether a contingency plan is realistic, the supervisory authority should cooperate with any other supervisory authorities that would be affected by the implementation of the contingency plans.

### **Monitoring by EIOPA**

3.6. In conjunction with national supervisory authorities, EIOPA will monitor the development and implementation of the contingency plans to ensure service continuity after the Withdrawal date. EIOPA expects supervisory authorities to provide the necessary information for an ongoing monitoring of the development and implementation of the contingency plans, within the current European Union framework for supervisory co-operation.

3.7. This Opinion will be published on EIOPA's website.

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<sup>6</sup> Article 41(5) of Solvency II

Done at Frankfurt am Main, 21 December 2017

[signed]

Gabriel Bernardino

Chairperson

For the Board of Supervisors