

## **Opinion on disclosure of information to customers about the impact 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 provision, 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 based on Directive 2009/138/EC (Solvency II)<sup>2</sup>, Directive 2002/92/EC (IMD)<sup>3</sup> and Directive (EU) 2016/97 (IDD).<sup>4</sup>
- 1.3. It is 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. EIOPA issued an Opinion on service continuity in light of the withdrawal of the United Kingdom from the European Union on 21 December 2017<sup>5</sup>. In that Opinion,

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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> Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.01.2003 p. 3).

<sup>4</sup> Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19).

<sup>5</sup> [https://eiopa.europa.eu/Publications/Opinions/2017-12-21%20EIOPA-BoS-17-389 Opinion on service continuity.pdf](https://eiopa.europa.eu/Publications/Opinions/2017-12-21%20EIOPA-BoS-17-389%20Opinion%20on%20service%20continuity.pdf)

EIOPA urged insurance undertakings to take the necessary steps in order to ensure service continuity with regard to insurance contracts concluded before the Withdrawal date. As outlined in that Opinion, there are different options under the current legal framework, which may be chosen by insurance undertakings to ensure service continuity, including the transfer of insurance contracts of insurance undertakings established in Member States other than the UK (EU27) to a subsidiary established in the UK, the transfer of insurance contracts of UK insurance undertakings to a subsidiary established in the EU27, the establishment of a third country branch or the change of domicile of a UK insurance undertaking in the legal form of an European company.

- 2.2. Insurance undertakings can assess whether and how the measures they have started to take or plan to take will affect the services provided to their customers. The impact will depend on the contingency measures taken by the individual insurance undertaking.
- 2.3. Given the fact that insurance contracts concluded before the Withdrawal date by UK undertakings in the EU27 and by EU27 insurance undertakings in the UK by way of freedom of establishment and freedom of services are in principle valid after that date, insurance undertakings should ensure the continuity of their services in order to fulfil their contracts with their customers. Without taking contingency measures, customers of cross-border contracts between the UK and the EU27 may face risks when it comes to the provision of services by insurance undertakings on a cross-border basis between the UK and the EU27 after the Withdrawal date.
- 2.4. To ensure a high level of customer protection, EIOPA considers it important that customers and beneficiaries<sup>6</sup> are made aware of these implications both for existing and for new contracts concluded before the withdrawal date in due time and are provided with clear and non-misleading information on the contingency measures taken or planned and on their impact on their insurance contracts. In addition, they should be provided with information where no measures are taken and the reason for not taking measures should be communicated to them. New beneficiaries should be informed when they submit claims.
- 2.5. The aim of this Opinion is to remind national supervisory authorities about the duty of insurance undertakings and insurance intermediaries to inform customers about the possible impact of the withdrawal of the UK from the EU on insurance contracts and of the relevant contingency measures taken by insurance undertakings and about the continuity of their contracts. It concerns all cross-border insurance contracts between the UK and the EU27, which might be affected by the withdrawal of the UK, including contracts that will already be terminated on the Withdrawal date, but for which open claims exist or might be reported thereafter. National supervisory authorities will have to carry out proper supervision of the

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<sup>6</sup> The term beneficiary is intended to cover any natural or legal person who is entitled to a right under an insurance contract (Recital 16 of Solvency II).

implementation of the contingency measures in order to ensure continuity of services of insurance contracts which are concluded on a cross-border basis before the withdrawal of the UK from the EU.

### **3. Ensuring information to customers and beneficiaries**

3.1. Customers who have already concluded an insurance contract, as well as beneficiaries of insurance contracts, should be appropriately informed by insurance undertakings about how the relevant contingency measures taken by their insurance undertaking impact their contractual relationship and services to them. The impact will depend on the contingency measures envisaged by the individual insurance undertaking. The following are examples of possible impacts:

- change of the contractual counterparty following a transfer of insurance contracts to another insurance undertaking,
- continuity of services and validity of insurance contracts,
- change or loss of protection provided by any existing national compensation scheme due to the transfer of insurance contracts to an insurance undertaking located in another jurisdiction,
- tax implications of insurance contracts including e.g. insurance premium tax following the relocation of an entity to another jurisdiction,
- changes to the claims management procedure or to other customer services (e.g. following a change of domicile of an insurance undertaking),
- additional organisational arrangements to deal with customer inquiries related to the withdrawal of the UK from the EU (e.g. publication of FAQs for customers, contact details, helpline etc.),
- jurisdiction and contact details of the competent authority following a transfer of insurance contracts to another insurance undertaking or the relocation of an entity,
- change of the law applicable to the insurance contract.

3.2. In order to enable potential customers to make an informed decision before concluding or renewing an insurance contract, they should be appropriately informed by the insurance undertaking about the impact on their contractual rights and on the provision of insurance services that may emerge from the withdrawal of the UK from the EU. This information obligation also applies to insurance intermediaries when they carry out insurance distribution activities at the point of sale, whilst the ultimate responsibility remains with the insurance undertaking.

3.3. Insurance undertakings should also provide the information as outlined above to their respective distribution channels to enable them to inform their customers accordingly.

3.4. Competent authorities should ensure that insurance undertakings and insurance intermediaries provide appropriate information to customers and beneficiaries. Enhanced cooperation and continuous dialogue between the supervisory

authorities concerned should be established to ensure a comprehensive review of actions taken by insurance undertakings and insurance intermediaries.

### **Monitoring by EIOPA**

3.6. In conjunction with national supervisory authorities, EIOPA will monitor how customers and beneficiaries are informed about the impact of the withdrawal of the UK from the EU on insurance contracts. National supervisory authorities should provide to EIOPA the necessary aggregated information for this monitoring within the current European Union framework for supervisory co-operation.

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

Done at Frankfurt am Main, 25 June 2018

[signed]

Gabriel Bernardino

Chairperson

For the Board of Supervisors